LAW REPORTS OF TRIALS OF WAR CRIMINALS

Selected and prepared by

THE UNITED NATIONS WAR CRIMES COMMISSION

VOLUME XIII

LONDON

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THE UNITED NATIONS WAR CRIMES COMMISSION

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1949

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One of the aims of this series of Reports is to relate in summary form the course of the most important of the proceedings taken against persons accused of committing war crimes during the Second World War, apart from the major war criminals tried by the Nuremberg and Tokyo International Military Tribunals, but including those tried by United States Military Tribunals at Nuremberg. Of necessity, the trials reported in these volumes are examples only, since the trials conducted before the various Allied Courts, of which the United Nations War Crimes Commission has had records, number over 1,600. The trials selected for reporting, however, are those which are thought to be of the greatest interest legally and in which important points of municipal and international law arose and were settled.

Each report, however, contains not only the outline of the proceedings in the trial under review, but also, in a separate section headed " Notes on the Case," such comments of an explanatory nature on the legal matters arising in that trial as it has been thought useful to include. These notes provide also, at suitable points, general summaries and analyses of the decisions of the courts on specific points of law derived primarily from a study of relevant trials already reported upon in the series. Furthermore, the volumes include, where necessary, Annexes on municipal war crimes laws, their aim being to explain the law on such matters as the legal basis and jurisdiction, composition and rules of procedure on the war crime courts of those countries before whose courts the trials reported upon in the various volumes were held.

Finally, each volume includes a Foreword by Lord Wright of Durley, Chairman of the United Nations War Crimes Commission.

continued inside back cover

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FOREWORD

This Volume contains in addition to a number of separate minor trials two trials of fundamental importance, examining with particular reference to Poland two great principles of the law of War Crimes : (1) the crime of genocide as it has been called, (2) the liability of parties to criminal organisations.

The word " genocide " has been much criticised by etymologists, for reasons which may be regarded, even if not inaccurate, as being pedantic. Genocide as used in this context means, to quote from the Indictment in the Nuremberg trial, a systematic programme aimed at the destruction of foreign nations or ethnic groups (" foreign " that is from the Nazi point of view) in part by elimination or suppression of national characteristics. The effect of the word as used in this connection was also defined, in the judgment of the Nuremberg Military Tribunal (Subsequent Proceedings) included in this volume, as a programme concerned and implemented " for one primary purpose . . . which might be summed up in one phrase : the twofold objective of weakening and eventually destroying other nations (*i.e.*, than Germany) while at the same time strengthening Germany, territorially and biologically at the expense of conquered nations."

The word itself is one of a great number of similar compounds in which the second portion " cide " is a Latin root from " caedo " (" I kill "), while the former part describes the particular object of the slaughter. As a few instances, one may take homicide, germicide, regicide, suicide, tyrannicide. As " cide " derives from a Latin root, so also should the first syllable be of Latin origin. But anomalous formations are not uncommon, as for instance suicide is anomalous, and tyrannicide may be from the original Greek word. In other contexts many hybrid formations can be found, *e.g.*, sociology. There are a great number of such words formed with " cide." Genocide is said to be derived from the Greek γένος, or rather the root *gen* : this root is also found in Latin in *genus* and *gens*. The connective article before " cide " is generally perhaps " i " not " o." But all this is pedantry. The idea has become of great importance in international law. It has been discussed in the United Nations (General Assembly of 11th December, 1946) which has prepared and adopted a definition which covers practically the entire field of the crimes tried in these cases, in particular abortions, punishments for sexual intercourse, preventing marriages and hampering reproduction, and measures taken for forced germanization including the kidnapping or taking away of children and infants, the deportation and resettlement of populations and the persecution of Jews. The draft Convention also included the more obvious methods of killing which would be

used (and were used in Poland) in order to destroy the Polish nation. The whole scheme as put into effect in Poland is too complex and many-sided to be capable of useful summary in this Foreword. The general character is fully illustrated in the text of this volume both in the judgment of the U.S. Military Tribunal (Subsequent Proceedings) and in the judgment of the Polish Supreme National Tribunal. In the indictment in both these cases the word genocide or genocidal is used though it does not appear in either judgment exactly as it appears in the indictment in the International Military Tribunal (I.M.T.) The Resolutions on the point and other proceedings before the United Nations will be found in detail in the Notes to the Case on pages 36-42 of this volume, where also will be found an instructive study of the concept.

It is interesting that there should be two judgments reported together in reference to this crime in Poland where perhaps it figured more largely and shockingly than in any other occupied territory. It is an accident that they should both be available. The trial in Poland was before the Supreme National Tribunal of Poland, the Constitution, jurisdiction and procedure of which were explained by Dr. Litawski on pages 82-97 of Volume VII of this series of Reports. The proceedings were, as was natural, in Polish. When final arrangements were being made for winding up the United Nations War Crimes Commission, the Polish representative, Colonel Muszkat, asked that at least three Polish reports should be included. The case which appears is one of those selected, the other two having been included in Volume VII. It has been reported by Dr. Litawski who did or supervised the necessary translation. It is hoped to include yet another Polish case. It is very helpful towards understanding the similarity and difference between a case tried before the Nuremberg Court and one tried before a Polish Court. In particular the latter trial will illustrate the dove-tailing together of the National Code and the International law of war, and to observe what additions or modifications are necessary to effect the dove-tailing. It may be noted that the most important cases of war crimes (killing, pillage and, in general, crimes against humanity) are specifically covered by the National Law, which only needs to be supplemented when that is necessary to give the defendant the opportunity of availing himself of the specific defences available under the law of war. On the other hand, many aspects of genocide, a category which in part overlaps with war crimes and crimes against humanity, and in part is different in scope and detail, can only sufficiently be dealt with by particular *ad hoc* amendments or extensions of the national law.

If I were to compare the two reports which in a sense cover the same ground, though the positions and personalities of the accused are different, I should be disposed to say that the Subsequent Proceedings judgment was

more analytical and so were the proceedings throughout. But I do not find any radical difference in the exposition and application of the Law and in each there is a most painstaking care and impartiality, as might be expected from the high attainments of all the judges concerned and the high legal traditions of the two countries to which they respectively belong. The latter report includes a valuable treatment of the liability of criminal organisations.

As I have already said, I do not think I can do better than to refer the reader to a careful study of the two Reports. The distinction between the Government General and the "annexed" territory which the Germans attempted to make raises no novel point.

The remaining Reports included in this volume are important in their different ways. One may call for particular note, that of Max Schmid who was charged with and found guilty of offences against the dead, the maltreatment of an unknown dead member of the United States Army. He was a medical officer in the German army. In effect he kept a head as souvenir which he had severed from a dead United States soldier. He was found guilty and sentenced to 10 years' imprisonment. The Geneva Convention and the United States Manual contain stringent provisions to that effect. The notes to the present report refer to other cases of the sort during the war in which the accused were Japanese military persons and in some of which the criminality was complicated by charges of cannibalism by the Japanese in the Far East. Customary international law has for centuries held that the maltreatment of dead belligerents is a serious offence. In the Weiss case self-defence was held to be an effective defence to a charge of killing a captured airman. Enforced prostitution of Dutch women in Batavia was held to be a war crime in the trial of Washio Awochi. The other cases reported in the volume will all repay careful reading because each in its way embodies important variants of well-known rules.

Dr. Litawski has prepared the Polish trial reported in this volume, while the rest of the reports contained herein are the work of Dr. Zivkovic with the exception of that on the trial of Max Schmid which was contributed by Mr. Stewart. Mr. Brand, whose main energies are now devoted to the writing of a general analysis of the decisions reported or cited in this series which will appear in Volume XV, has not contributed any separate reports to the present volume, but has performed as usual the selective, supervisory and technical work incidental to his position as Editor.

WRIGHT.

London, *January*, 1949.

CASE No. 73

TRIAL OF ULRICH GREIFELT AND OTHERS

UNITED STATES MILITARY TRIBUNAL, NUREMBERG,
10TH OCTOBER, 1947—10TH MARCH, 1948

Criminal nature of racial persecutions—Genocide—Membership of Criminal Organisations—Plea concerning annexed territory.

Ulrich Greifelt and the other accused in this trial were involved in various capacities in the carrying out of the Nazi racial policy in countries occupied by Germany, mainly in East and South-East European countries. They were leading members of four organisations to which racial tasks were assigned : the Main Staff Office (Stabshauptamt) of the Reichs Commissioner for the Strengthening of Germanism (*Reichskommissar fuer die Festigung des Deutschen Volkstums*), commonly known as " RKFDV " ; the SS. Main Race and Settlement Office (*Rasse-und Siedlungshauptamt*) commonly known as " RUSHA " ; the Repatriation Office for Ethnic Germans (*Volksdeutsche Mittelstelle*), commonly known as " VOMI " and the Well of Life Society (*Lebensborn*).

The accused were charged with committing, in pursuance of a systematic programme of genocide, crimes against humanity and also war crimes between September, 1939, and April, 1945, as individual perpetrators. All of them, but one, were also charged with membership of criminal organisations, as defined in the Judgment of the Nuremberg International Military Tribunal.

One accused was found not guilty and acquitted, and the remaining thirteen were held guilty of crimes against humanity, war crimes, membership of criminal organisations, or of one or more of the foregoing three counts. Sentences pronounced ranged from 25 years' down to several periods of less than 3 years' imprisonment.

The essence of the charges and convictions was that the above crimes were committed in furtherance of and as an integral part of the Nazi racial ideology and policy. The

trial therefore dealt with the main body of racial persecutions which distinguished so conspicuously the Nazi régime inside the Third Reich and in all countries invaded and occupied by Germany, during the war of 1939-1945. It is of the utmost importance both as a record of events and facts of an unparalleled nature in modern history and as a piece of jurisprudence applying the ever developing rules of international penal law.

A. OUTLINE OF THE PROCEEDINGS

1. THE INDICTMENT

The accused named in the Indictment were the following : Ulrich Greifelt, Rudolf Creutz, Konrad Meyer-Hetling, Otto Schwarzenberger, Herbert Huebner, Werner Lorenz, Heinz Brueckner, Otto Hofmann, Richard Hildebrandt, Fritz Schwalm, Max Sollmann, Gregor Ebner, Guenther Tesch and Inge Viemetz. Their official positions are described elsewhere.

The Indictment submitted against them contained three counts. The first two charged the commission of crimes against humanity and war crimes respectively, as defined in Law No. 10 of the Allied Control Council for Germany,[1] including " murders, brutalities, cruelties, tortures, atrocities, deportation, enslavement, plunder of property, persecutions and other inhumane acts." The third count charged membership of criminal organisations under the terms of the same law and in consequence of the declarations made by the Nuremberg International Military Tribunal.

Count One charged the commission of Crimes against Humanity in respect of " civilian populations, including German civilians and nationals of other countries, and against prisoners of war." It was couched in the following terms :

> " 1. Between September, 1939, and April, 1945, all the defendants herein committed Crimes against Humanity as defined by Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organisations or groups connected with : atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, persecutions on political, racial and religious grounds, and other inhumane and criminal acts against civilian populations, including German civilians and nationals of other countries, and against prisoners of war.
>
> " 2. The acts, conduct, plans and enterprises charged in Paragraph 1 of this Count were carried out as part of a systematic program of genocide, aimed at the destruction of foreign nations and ethnic groups, in part by murderous extermination, and in part by elimination and suppression of national characteristics. The object of this program was to strengthen the German nation and the so-called ' Aryan ' race at the expense of

[1] Regarding this Law and other rules relating to United States Military Tribunals, see Vol. III of this series, pp. 113-120.

such other nations and groups by imposing Nazi and German characteristics upon individuals selected therefrom (such imposition being hereinafter called ' Germanization ') ; and by the extermination of ' undesirable ' racial elements. This program was carried out in part by

(*a*) Kidnapping the children of foreign nationals in order to select for Germanization those who were considered of ' racial value ' ;

(*b*) Encouraging and compelling abortions on Eastern workers for the purposes of preserving their working capacity as slave labour and weakening Eastern nations ;

(*c*) Taking away, for the purpose of exterminating or Germanization, infants born to Eastern workers in Germany ;

(*d*) Executing, imprisoning in concentration camps, or Germanizing Eastern workers and prisoners of war who had had sexual intercourse with Germans, and imprisoning the Germans involved ;

(*e*) Preventing marriages and hampering reproduction of enemy nationals ;

(*f*) Evacuating enemy populations from their native lands by force and resettling so-called ' ethnic Germans ' (Volksdeutsche) on such lands ;

(*g*) Compelling nationals of other countries to perform work in Germany, to become members of the German community, to accept German citizenship, and to join the German Armed Forces, the Waffen-SS, the Reich Labour Service and similar organisations.

(*h*) Plundering public and private property in Germany and in the incorporated and occupied territories, *e.g.*, taking church property, real estate, hospital apartments, goods of all kinds, and even personal effects of concentration camp inmates, and

(*i*) Participating in the persecution and extermination of Jews."

Count Two dealt with War Crimes committed against " prisoners of war and civilian populations of countries and territories under the belligerent occupation of, or otherwise controlled by, Germany." It reads :

" Between September 1939 and April 1945, all the defendants herein committed War Crimes, as defined by Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organisations or groups connected with : atrocities and offenses against persons and property constituting violations of the laws and customs of war, including but not limited to, plunder of public and private property, murder, extermination, enslavement, deportation, imprisonment, torture, and ill-treatment of and other inhumane acts against thousands of persons. These crimes embraced, but were not limited to, the particulars set out in Paragraphs 11-21, inclusive, of this Indictment, which are incorporated herein by reference, and were committed against prisoners of war and civilian populations of countries and territories under the belligerent occupation of, or otherwise controlled by, Germany.

" The acts and conduct of the defendants set forth in this Count were committed unlawfully, wilfully, and knowingly, and constitute violations of international conventions, including the Articles of the Hague Regulations, 1907, and of the Prisoner of War Convention (Geneva, 1929), enumerated in Paragraph 23 of this Indictment, of the laws and customs of war, of the general principles of criminal law as derived from the criminal laws of all civilised nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10."

Count Three charged the accused with membership of criminal organisations in the following terms :

" All the defendants herein except defendant Viermetz, are charged with membership, subsequent to September 1, 1939, in the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the ' SS '), declared to be criminal by the International Military Tribunal and Paragraph 1 (*d*) of Article II of Control Council Law No. 10."

2. THE EVIDENCE BEFORE THE TRIBUNAL

(i) *Organisations Involved and Official Positions of the accused*

The evidence brought before the Tribunal showed that all the accused were officials of the four organisations described in the Indictment, and that the offences proved against them were committed by them in the above capacities.

The Main Staff Office of the Reichscommissioner for the Strengthening of Germanism was the relevant directing body. It operated under the supervision of Heinrich Himmler, Reichsfuehrer of the S.S. and Chief of the Nazi Police. It was responsible for, among other things, bringing " ethnic Germans " into Germany, evacuating non-Germans from desirable areas in foreign lands, and establishing new settlements of Germans and " ethnic Germans " in such areas. These activities involved transfer of populations, Germanisation of citizens of other countries, deportation of Eastern workers, deportation to slave labour of members of other countries eligible for Germanization, kidnapping of so-called " racially valuable " children for Germanization, participation in the performance of abortions on Eastern workers, murder and plunder of property. The chief defendant, Greifelt, was head of the Main Staff Office and in personal charge of one of its branches, Amstgruppe B. The latter consisted of offices for economy, agriculture and finance. He held the ranks of Obergruppenfuhrer of the S.S. and of Lt.-General of the Police. The other accused who held high positions in the Main Staff Office as heads of various branches, were : Crauz, Oberfuehrer S.S. (Senior Colonel), Deputy to Greifelt, chief of Amstgruppe A, which consisted of the Central Office and the offices for resettlement of folkdom and labour and in personal charge of Amt Z (Central Office) ; Meyer-Hetling, Oberfuehrer S.S., Chief of Amstgruppe C, which consisted of the Central Land Office and the offices for planning and construction, in personal charge of Amt VI (Planning) ; Schwarzenberger, Oberfuehrer S.S., Chief of Amt V (Finance) ; Huelman, Standartenfuehrer S.S. (Colonel), Chief of the Branch Office at Posen.

The leading position of the Main Staff Office was established by the Tribunal in the following terms : " The Main Staff Office was actually the directing head of the whole Germanization program, co-ordinating the activities of the other organizations. Before the end of the war, the activities of the Main Staff Office involved, among other things, the expulsion and deportation of whole populations ; the Germanization of foreign nationals ; the deportation of foreigners to Germany as slave labor ; the kidnapping of children ; and the plundering and confiscation of property of enemy nations."

The office for Repatriation of Ethnic Germans (VOMI) was responsible for, among other things, the selection of " ethnic Germans," their evacuation from their native country, their transportation into " VOMI " camps, their care in these camps including temporary employment as well as ideological training, and their indoctrination after final employment or resettlement. It took large amounts of personal effects of concentration camp inmates and of real estate, for the use of resettlers. It also played a leading part in the compulsory conscription of enemy nationals into the Armed Forces, Waffen-SS, Police and similar organisations. In addition, it participated in the compulsory Germanization of " ethnic Germans " and people of German descent, in the forcing into slave labour of individuals considered eligible for Germanization, and in the kidnapping of foreign children. Werner Lorenz was the Chief of VOMI ; and Heinz Brueckner was Chief of Amt VI (Safeguarding of German Folkdom in the Reich-Reichsicherung deutschen Volkstums in Reich).

The S.S. Main Race and Settlement Office (RUSHA) was responsible for racial examinations. It was an advisory and executive office for all questions of racial selection. Racial examinations were carried out by RUS leaders (Rasse und Siedlungs Fuehrers) or their staff members, called racial examiners (Eignungspruefer), in connection with : cases where sexual intercourse between workers and prisoners of war of the Eastern nations and Germans had occurred ; pregnancy of Eastern workers ; children born to Eastern workers ; classification of people of German descent ; selection of enemy nationals, particularly Poles and Slovenes, for slave labour and Germanization ; kidnapping of children eligible for Germanization ; transfers of populations ; and persecution and extermination of Jews. Otto Hofmann was the Chief of RUSHA from 1940 to 1943 ; Richard Hildebrandt was the Chief of RUSHA from 1943 to 1945 ; Fritz Schwalm was Chief of Staff of RUSHA ; and Herbert Huebner was the RUS leader for the Warthegau, Poland.

The " Lebensborn " Society existed long before the war and was primarily concerned with running a maternity home. It was contended by the prosecution that, within the racial scheme for annihilating nations under German rule, it was responsible for kidnapping of foreign children for the purpose of Germanization. Max Sollmann was the Chief of Lebensborn and in personal charge of Main Department A, which consisted of offices for reception into homes, guardianship, foster homes and adoptions, statistics, and registration ; Gregor Ebner was the Chief of the Main Health Department ; Guenther Tesch was the Chief of the Main Legal Department ; and Inge Viermetz was Deputy Chief of Main Department A.

In regard to these organizations and their leading officials, the Tribunal made the following finding : " Each organization had certain well-defined tasks, which after 1939 were modified or expanded as the recent war progressed. The organizations worked in close harmony and co-operation, as will later be shown in this judgment, for one primary purpose in effecting the ideology and program of Hitler, which may be summed up in one phrase : The twofold objective of weakening and eventually destroying other nations while at the same time strengthening Germany, territorially and biologically, at the expense of conquered nations."

The same objective was stressed by the Prosecution in the following terms :

> " The fundamental purpose of the four organisations . . . was to proclaim . . . and safeguard the supposed superiority of ' Nordic ' blood, and to exterminate and suppress all sources which might ' dilute ' or ' taint ' it. The underlying objective was to assure Nazi dominance over Germany and German domination over Europe in perpetuity."

(ii) *The Master Scheme : Genocide*

As already mentioned, in the Indictment the prosecution had charged that crimes against humanity perpetrated by the accused were carried out as part of a " systematic programme of genocide," that is of the " destruction of foreign nations and ethnic groups."

The evidence produced showed that this programme had been devised by the top ranking Nazi leaders in pursuance of their racial policy of establishing the German nation as a master race and to this end exterminate or otherwise uproot the population of other nations. The programme was laid down in a series of documents.

As early as a few days after the aggression against Poland, on 7th October, 1939, Hitler issued a Decree appointing Himmler as head of the above-described racial policy, in which the following general directives were laid down :

> " The consequences which Versailles had on Europe have been removed. As a result, the Greater German Reich is able to accept and settle within its space German people, who up to the present had to live in foreign lands, and to arrange the settlement of national groups within its spheres of interest in such a way that better dividing lines between them are attained. I commission the Reichsfuehrer-SS with the Execution of this task in accordance with the following instructions :
>
> Pursuant to my directions the Reichsfuehrer-SS is called upon :
>
> (1) to bring back those German citizens and racial Germans abroad who are eligible for permanent return into the Reich ;
>
> (2) to eliminate the harmful influence of such alien parts of the population as constitute a danger to the Reich and the German community ;
>
> (3) to create new German colonies by resettlement, and especially by the resettlement of German citizens and racial Germans coming back from abroad."

These directives were first implemented in the occupied territories of Poland. On 25th November, 1939, Himmler received a document prepared

by the Racial-Political Office of the Nazi Party and entitled " The Problem of the Manner of Dealing with the Population of the Former Polish Territories on the Basis of Racial-Political Aspects."

This document contained a general statement on the goals of Nazi racial policy in Eastern Europe, which was couched in the following terms :

" The aim of the German policy in the new Reich territory in the East must be the creation of a racial and therefore . . . uniform German population. This results in ruthless elimination of all elements not suitable for Germanization.

" This aim consists of *three interwoven tasks :*

First, the complete and final Germanization of the population which seems to be suitable for it.

Second, deportation of all foreign groups which are not suitable for Germanization, and

Third, the resettlement by Germans."

The document then contained the following elaborate programme regarding the selection of Polish citizens of German stock to be re-incorporated into the Reich and the forcible Germanizations of the purely Polish population :

" All Germans, beyond doubt established as German nationals, are to be registered in a German People's List. They receive the German citizenship. Only these Germans have the right to be Reich citizens.

" All other persons are not entitled to the right to be Reich citizens and therefore have no political rights.

" In the future Germans are to carry exclusively German names ; that is, family names which in their root and etymology are of German origin. Names which are only Germanized in the written form, but show their Slavonic origin, cannot be regarded to be German names. They too are to be changed.

" The official language of all authorities, including courts, is exclusively German.

" Poles cannot be business owners. The real estates, also the farms they possessed up to now, are being expropriated. Poles are not permitted to exercise an independent trade and cannot be masters of a trade ; all existing apprentice contracts are annulled ; promising Polish apprentices can be taken to Germany proper as apprentices.

" As to the treatment of the population remaining in the Eastern territories—mainly of the Polish and the German-Polish mixed population—it is constantly to be born in mind, that all measures of the legislature and administration have but one purpose, namely, to achieve a Germanization of the non-German population by all means and as quickly as possible. For this reason a continuation of a national Polish cultural life is definitely out of question. The Polish orientated population, in as far as it cannot be assimilated, is to be deported, the remainder to be Germanized. Therefore, a basis for a national and cultural autonomous life must no longer exist. In future there will be no Polish schools in the Eastern territories. In general there will be

only German schools with emphasis on National Socialist racial teachings. Poles and members of the German-Polish mixed population who are not yet completely Germanized are not permitted to attend German universities, trade schools or high and secondary schools. Children of the members of this part of the population are only admitted if they are members of the Hitler Youth and are reported by it.

" Any religious service in Polish is to be discontinued. The Catholic and even the Protestant religious service are only to be held by especially selected German-conscious German priests and only in German. Considering the political importance and the danger of the Catholic-Polish church connected with it, one could get the idea to outlaw the Catholic church entirely. However, one has to keep in mind that the population is strongly attached to the church and that such a measure could perhaps result in the opposite of Germanization. Specially selected, German-minded Catholic priests could probably gain not unimportant a success for the Germanization by a clever influence on the Catholic-Polish part of the population. The probability that especially Catholics of German extraction who were Polonized in the past centuries, could, with the help of suitable German priests, be brought back to the German people, is very great. In case of the Protestant Church the priests, who during the Polish time, especially during the last year, tried to betray the German people in a hatefulness which can hardly be described (under the leadership of their bishop Bursche), are ruthlessly to be removed as enemies of any national conviction and of National Socialism. Polish church holidays are to be abrogated. Only the holidays of both denominations permitted in the Reich are to be observed.

" In order to prevent any cultural or economic life, Polish corporations, associations and clubs cease to exist ; Polish church unions are also to be dissolved.

" Polish restaurants and cafes as centres of the Polish national life are to be closed down. Poles are not permitted to visit German theatres, variety shows, or cinemas. Polish theatres, cinemas and other places of cultural life are to be closed down. There will be no Polish newspapers, nor printing of Polish books nor the publishing of Polish magazines. For the same reasons Poles must not have radios and should not possess a phonograph.

" Our Germanization policy has the aim to extract the Nordic groups from the remaining population and to Germanize them, and, on the other hand, to keep the racially foreign Polish strata on a low cultural level and to deport them from time to time to Central Poland."

A special programme was devised in the same document regarding the treatment of the Jews and of the mixed population, that is of families set up by marriages between Poles and Germans. It dealt in particular with the treatment of children of such mixed marriages :

" *Treatment of the mixed population.*

" These thoughts make it most recommendable to transfer those persons, who were not included in the German People's List but who

live in a racial mixed marriage with Poles or who are of mixed German-Polish descent, to Germany proper, if they are not especially active for the Polish ideology. The final Germanization can be achieved in Germany proper. Children from such German-Polish racial mixed marriages have, whenever possible, to be educated in Germany proper and in German surroundings (educational institutions). The influence of the Polish parent must be excluded to the greatest possible extent.

" Probably only a small part of the Polish population within the new Reich territory can be Germanized ; the easiest way will be to transfer them, and especially their children, to Germany proper, where, as a matter of course, a collective employment or settlement is completely out of question.

" *Special treatment of racially valuable children.*

" A considerable part of the racially valuable groups of the Polish people, who, on account of national reasons are not suitable for Germanization, will have to be deported to the rest of Poland. But here it has to be tried to exclude racially valuable children from the re-settlement and to educate them in suitable educational institutions, probably like the former military orphanage at Potsdam, or in a German family. The children suitable for this are not to be over 8 to 10 years of age because, as a rule, a genuine ethnic transformation, that is, a final Germanization, is possible only up to this age. The first condition for this is a complete prevention of all connections with their Polish relatives. The children receive German names which etymologically are of accentuated teutonic origin, their descendant certificate will be kept by a special department. All racially valuable children whose parents died during the war or later, will be taken over in German orphanages without any special regulation. For this reason a decree prohibiting the adoption of such children by Poles is to be issued.

" Any keeping of biologically healthy children in church institutions is prohibited.

" Children of such institutions, if not older than approximately 10 years, are to be transferred to German educational institutions.

" Poles with a neutral attitude, who are willing to send their children to German educational institutions, do not need to be deported to the rest of Poland.

" As already related, the final aim must be the complete elimination of the Polish national spirit. These Poles who cannot be Germanized must be deported to the remaining Polish territory.

" In all cases of eviction of classes which are racially equivalent to us and valuable, the possibility of a retention of the children and their special education is to be considered.

" If the Eastern territories are to be Germanized it is necessary that all the land, including land which was handed down from generation to generation by its Polish owners, be expropriated in favor of the German settlers. Thereby the Polish peasant loses the basis of his existence and is therefore to be deported to the remainder of Poland, if he cannot be Germanized.

" Jews, regardless whether they are Jews by creed or baptized, are to be deported to the remainder of Polish territory by cancellation of all their obligations, ruthlessly and as soon as possible.

" Persons of mixed Polish-Jewish blood, regardless of their degree, are to be placed on the same level, without any exceptions and under all circumstances, as Poles and Jews who are to be deported."

The following further lines of action were laid down in regard to Poles and Jews :

" Independent of the not yet published future solution of the problem regarding the legal State structure of the remainder of Poland, one must start from the fact that the remainder of Poland will also in future be under the ruling influence of the Reich.

" The population of this territory is composed of Poles and Jews and in addition of a large number of Polish-Jewish half breeds. A part of the population must be considered as definitely of alien blood from a racial point of view, at any rate as unsuitable for assimilation. Under the circumstances it must be stated in principle that the German Reich is in no way interested in raising the Polish and Jewish parts of the population of the remainder of Poland to a higher racial and cultural level, or in their education.

" The inhabitants of the remainder of Poland must be given their citizenship. However, they are not to have any independent political parties, and associations which might provide a possible nucleus for a future national concentration must be forbidden. Non-political clubs should not be allowed either, or only from very special points of view. Cultural associations, for instance, vocal societies, clubs for the study of the home-country, gymnastic and sports clubs, social clubs, etc., can by no means be regarded without misgivings, as they can easily promote nationalism amongst their members. In particular, the gymnastic and sport clubs also lead to a physical strength of the population, in which we are not interested.

" Medical care on our part should be confined to preventing epidemics from spreading to the Reich territory.

" All measures serving birth control are to be admitted or to be encouraged. Abortion must not be punishable in the remaining territory. Abortives and contraceptives may be publicly offered for sale in every form without any police measures being taken. Homosexuality is to be declared not punishable. Institutes and persons who make a business of performing abortions should not be prosecuted by the police. Hygienic measures from a racial point of view should not be encouraged in any way.

" It will be the task of the German administration to play up the Poles and Jews against each other."

The above programme was later developed by Himmler. In a directive entitled " Reflections on the Treatment of Peoples of Alien Race in the East," he spoke of the necessity to bring about the extinction of alien races, and issued the following instructions regarding the treatment of children :

" A basic issue in the solution of all these problems is the question of schooling and thus the question of sifting and selecting the young. For the non-German population of the East there must be no higher school than the fourth-grade elementary school.

" The sole goal of this school is to be :

Simple arithmetic up to 500 at the most ; writing of one's name ; the doctrine that it is a divine law to obey the Germans and to be honest, industrious and good. I don't think that reading should be required.

" Apart from this school there are to be no schools at all in the East. Parents, who from the beginning want to give their children better schooling in the elementary school as well as later on in a higher school must make an application to the Higher SS and the police leaders. The first consideration in dealing with this application will be whether the child is racially perfect and conforming to our conditions. If we acknowledge such a child to be as of our blood, the parents will be notified that the child will be sent to a school in Germany and that it will permanently remain in Germany.

" The parents of such children of good blood will be given the choice of either giving away their child ; they will then probably produce no more children so that the danger of this subhuman people of the East obtaining a class of leaders which, since it would be equal to us, would also be dangerous for us, will disappear ; or else the parents pledge themselves to go to Germany and to become loyal citizens there. The love towards their children whose future and education depends on the loyalty of the parents will be a strong weapon in dealing with them.

" Apart from examining the applications made by parents for better schooling of their children, there will be an annual sifting of all children of the General Government between the ages of six and ten in order to separate the racially valuable and non-valuable. The ones who are considered racially valuable will be treated in the same way as the children who are admitted on the basis of the approved application of their parents."

This programme was approved by Hitler on 25th May, 1940, and orders were given for its execution in complete secrecy. Greifelt was one of those initiated from the outset. Similar instructions were issued for dispossessing the victims of this programme of national extinction of their property by means of confiscation. On 16th December, 1939, Himmler issued the following orders :

I

" To strengthen Germanism and in the interest of the defence of the Reich, all articles mentioned in section II of this decree are hereby confiscated. This applies to all articles located in the territories annexed by the Fuehrer's and Reich Chancellor's decree of 12.10.39 and in the General Government for the occupied Polish territories. They are confiscated for the benefit of the German Reich and are at the disposal of the Reich Commissioner for the Strengthening of Germanism. Provided always that this does not apply to articles which are fully or

for more than 75% the property of German citizens or persons of German race. In particular are confiscated all articles mentioned in section II which are in archives, museums, public collections or in the private possession of Poles and Jews if their protection and expert safekeeping is in German interest.

II

" (1) Historical and pre-historical articles, documents, books, which are of interest for questions of cultural value and of public life, specially for the question of the German share in the historical, cultural and economic development of the country, and documents which are relevant for the history of present events.

" (2) Articles of art of cultural value, *e.g.*, pictures, sculptures, furniture, carpets, crystal, books, etc.

" (3) Furnishings and jewelry made of precious metal.

IV

" All confiscations made before this decree by authorities of the Reichfuehrer SS and Chief of German Police and the Reichcommissioner for the Strengthening of Germanism are hereby confirmed. They are to be regarded as made for the benefit of the German Reich and are at the disposal of the Reichcommissioner for the Strengthening of Germanism."

Further evidence submitted to the Tribunal showed that all the general directions and instructions set out above were strictly implemented. They resulted in the undertaking of a series of criminal measures which are described in more detail below.

(iii) *Kidnapping of Alien Children*

One of the measures undertaken by the accused in order to carry out the programme of Genocide, consisted in forcibly removing from occupied territories children regarded as racially fit to be Germanized. This policy was defined by Himmler in a letter of 18th June, 1941, where, speaking of Polish children, he said the following :

" I would consider it right if small children, of Polish families, who show especially good racial characteristics were apprehended and educated by us in special children's institutions and children's homes which must not be too large. The apprehension of the children would have to be explained with endangered health . . .

" After half a year the genealogical tree and documents of descent of those children who prove to be acceptable should be procured. After altogether one year it should be considered to give such children as foster children to childless families of good race. . . ."

Later, in 1943, Himmler formulated this policy in the following terms :

" I consider that in dealing with members of a foreign country, especially some Slav nationality, we must not start from German points of view and we must not endow these people with decent German thoughts and logical conclusions of which they are not capable, but we must take them as they really are."

" Obviously in such a mixture of peoples there will always be some racially good types. Therefore I think that it is our duty to take their children with us, to remove them from their environment, if necessary by robbing or stealing them. . . . Either we win over any good blood that we can for ourselves and give it a place in our people or . . . we destroy this blood. . . ."

Pursuant to this scheme Greifelt issued appropriate orders, known as " Regulation 67/1," where he instructed RKFDV and RUSHA officials in the following terms :

" In order to be able to regain for German Folkdom those children, whose racial appearance indicates nordic parents, it is necessary that the children who are in former Polish orphanages and with Polish foster-parents, are subjected to a racial and psychological process of selection. These children, who are considered to be racially valuable to German Folkdom, shall be Germanized. . . ."

The decree further provided, in great detail, for the registration of the children, their racial examination by RUSHA, a medical examination and their subsequent treatment. Particular care was taken to keep as a secret that the children involved were of Polish stock :

" Special attention is to be given that the expression ' Polish children suitable for Germanization ' may not reach the public to the detriment of the children. The children are rather to be designated as German orphans from the regained Eastern Territories."

At the same time orders were issued by Himmler and carried out by the Main Staff Office, RKFDV, regarding the treatment of children of unsuitable parents. Children of politically unreliable parents on account of their having shown hostile feelings towards Polish citizens of German stock, were to be segregated from their parents. They were to be put in local German public schools and included in the Hitler Youth organisation. Higher education was prohibited.

Evidence was produced to the effect that, in handling this matter, a steady correspondence developed between Himmler's office, RUSHA, VOMI and the Main Staff Office, involving the accused. It was proved that, among others, Hofmann and Hildebrandt as heads of RUSHA, were acquainted with all the details in the summer of 1941, and took part in the kidnapping. Schwalm was another direct participant.

Of the officials of VOMI evidence showed that Lorenz and Brueckner were also active in numerous cases.

(iv) *Abortions on Eastern Workers*

Another method applied was to prevent the birth of children by women of the Eastern occupied territories, Poland and the U.S.S.R. Abortions were prescribed wherever pregnancy had occurred as a result of sexual intercourse between members of the Nazi occupying authorities and local women. These instructions were issued by Himmler in March, 1943 :

" Where pregnancy is caused by sexual intercourse between a member of the SS or the Police and a non-German woman, residing in the occupied Eastern territories, an interruption of pregnancy is to be carried out positively by the competent physician of the SS or the

Police, unless that woman is of good stock, which is to be ascertained in advance in every case.

" The Russian physicians or the Russian Medical Association, which must not be informed of this order, are to be told in individual cases, that the pregnancy is being interrupted for reasons of social distress. It must be explained in such a way, that no conclusions to the existence of a definite order may be drawn."

This order was later extended to women working in the Reich as slave labour.

The organisation RUSHA took an active part in the carrying out of the above-described orders, chiefly through its heads Hofmann and Hildebrandt. Its role consisted mainly in conducting racial examinations of the pregnant women, under the following specific instructions :

" . . . If it is found by this racial examination that a racially valuable is to be expected, then the consent for abortion is to be denied. If on the basis of the racial examination the offspring is expected not to be racially valuable, the consent for abortion is to be granted.

" The racial examination is to be carried out rapidly. Further directives concerning the carrying out of the racial examination and the treatment of the cases in which the consent for abortion is to be denied are issued by the Reichsfuehrer SS and Chief of the German Police, or by the RUS—Main Office SS. . . . "

It is on the basis of such examinations that decisions regarding abortions were taken.

The fate of the children allowed to be born was that of complete Germanization from the cradle ; this was shown in a letter from Himmler's office to RUSHA :

" The reception into the care of the NSV or of Lebensborn of the child of good racial stock will necessitate in most cases its separation from the mother who remains at her working place. Particularly for this reason the reception into that care of the child of good racial stock is only possible with the mother's consent. She has to be made to consent to it through interpretations by the caretaking office which set forth the advantages but not the ends of this procedure. . . ."

The Tribunal took note of the fact that the mother was " to be *made* to consent."

(v) *Taking away of Infants of Eastern Workers*

As distinct from the kidnapping of grown up children for Germanization, the accused were involved in a programme of stealing newly born infants of Eastern workers brought to Germany as forced or slave labourers in factories and agriculture. This was done in connection with the abortion policy, in cases where pregnancy was not discovered until it was too late to perform an abortion or the child was born before pregnancy was discovered. The following instructions were given in a Decree of 27th July, 1943 :

" After giving birth the foreign working women have to resume work as soon as possible according to the instructions of the Plenipotentiary for the assignment of labor. . . .

" The children born by the foreign working women may in no case be attended by German institutions, be taken into German children's homes, or else be reared and educated together with German children. Therefore, special infant-attendance-institutions of the simplest kind, so-called ' Foreigners' children's nursing homes,' have been erected within the billets where these children of foreigners are attended to by female members of the respective nationality. . . . It is therefore important that the children of foreigners who, partly, are of a similar race and bearers of German blood and may therefore be considered as valuable are not assigned to the ' Foreigners' children's nursing home,' but if possible, they are to be saved for the German nationality and to be educated as German children.

" For this reason an examination of the racial characteristics of the father and mother has to be carried out in cases where the father of a foreigner's child is of German or of kindred race (Germanic) . . ."

Racial examinations were conducted by RUSHA and these examinations determined whether or not the infants were to be taken away from their mothers. Children considered to be racially impure were also to be taken away and put in separate assembly centres, completely segregated from German and other children. A confidential report made to Himmler disclosed the treatment to which such " impure " infants were subjected :

" I found that all of the babies located in this home were undernourished. As I was told by SS-Oberfuehrer Langoth only $\frac{1}{2}$ liter milk and $1\frac{1}{2}$ cubes of sugar per baby per day are furnished to the home on the basis of a decision of the Land Food Office. With this ration the babies must perish from undernourishment in a few months. I was informed that this agreement exists concerning the raising of these babies. . . .

" There exists only one way or the other. Either one does not wish that these children remain alive—then one should not let them starve to death slowly and take away so many liters of milk from the general food supply ; there are means by which this can be accomplished without torture and pain. Or one intends to raise these children in order to utilise them later on as labor. In this case they must be fed in such a manner that they will be fully usable as workers. . . ."

Those more particularly involved in the carrying out of this policy were RUSHA's heads Hofmann and Hildebrandt.

The Tribunal dismissed, for lack of evidence, the prosecution's contentions that, in addition to RUSHA, Lebensborn and its members were also implicated in the taking away of infants.

(vi) *Punishment for Sexual Intercourse with Germans*

In pursuance of the same racial policy, workers from occupied countries in Germany were subjected to still more drastic measures involving their personal security and their lives.

With the advent of foreign workers in Germany there followed incidents of sexual intercourse between them and Germans ; the Nazis issued decrees outwardly meant to protect the German race, and by doing so they ordered and provoked the murder of numerous inhabitants of occupied countries.

On 3rd July, 1940, Pancke, then chief of RUSHA, sent a report to Himmler's deputy, Bormann, suggesting the first measures to be taken. He said :

> " At present, there are hundreds of thousands of prisoners in Germany of all nationalities and degrees, partly in camps, but for the most part, however, as workers.
>
> " . . . The dangers of inter-mixing and bastardizing of our people are extraordinarily grave. They lie to a great extent in the almost unlimited lack of knowledge throughout our nation of the problems of blood."

As a result, the Reich Main Security Office, Reichssicherheitshauptamt (RSHA), which was the top Gestapo Office, promulgated decrees which provided that if a foreigner had sexual intercourse with a German woman, he should be arrested and examined by a racial examiner of RUSHA. The fate of the arrestee depended entirely on RUSHA's findings. Those considered to be racially inferior were subject to " special treatment," that is to death, or to seclusion in a concentration camp. Those found to be racially valuable were subject to Germanization. The " Special treatment " was prescribed in the following terms :

> " Special treatment is hanging . . .
>
> " Sexual intercourse is forbidden to the manpower of the original Soviet Russian territory.
>
> " For every case of sexual intercourse with German countrymen or women, special treatment is to be requested for male manpower from the original Soviet Russian territory, transfer to a concentration camp for female manpower.
>
> " When exercising sexual intercourse with other foreign workers, the conduct of the manpower from the original Soviet Russian territory is to be punished as a severe violation of discipline with transfer to a concentration camp.
>
> " The intercourse between other foreign workers employed in the Reich and the manpower from the original Soviet Russian territory also brings great dangers to be dealt with by the security police, therefore, it should also be fought with measures against the foreign workers. . . ."

These instructions were subsequently extended to subjects of other nations, such as Czechs.

The complicity of RUSHA and its leading members in carrying out the instructions was proved by numerous documents. Thus, for instance, Hofmann made the following orders :

> " With regard to illicit sexual intercourse of labourers of foreign stock the following ordinances are in force :
>
> " All serious offences such as assault and sexual offences and sexual intercourse with German women and girls are to be reported at once to the Security Service (Security Police) ; as a matter of principle the department of justice will not be contacted in the beginning. As a rule both parties will be arrested.

" After being investigated as to his nationality the party of foreign race is subject to a racial evaluation by the competent RuS Field Leader ; a potential suitability toward Germanization is to be explored.

" When a case of sexual intercourse is detected, the Amtsarzt (official physician) has to ascertain whether the participating German woman is pregnant. It is to be stated how far the pregnancy is advanced and whether another and what person beside the one of foreign stock in question might have fathered the prospective child (this investigation to be made by the Youth Office). If the person of foreign stock is fit for Germanization and if both parties are evaluated favourably under the racial viewpoint, marriage is possible under certain conditions ; however, marriage between laborers from Serbia, or other Eastern labourers, and German girls are not permitted for the time being. A female worker of foreign stock, caused by the German man (in abuse of his position) to submit to sexual intercourse, will be taken into protective custody for a brief period, thereafter assigned to a different job. In other cases the female worker of foreign race is to be confined to a concentration camp for women. Pregnant women are to be sent to a concentration camp only after they have given birth and stilled the baby."

Similar orders were issued by Hildebrandt.

(vii) *Impeding the Reproduction of Enemy Nationals*

Measures, concerning mainly inhabitants of Poland, were taken to prevent their reproduction and thus contribute to the destruction of non-German races. They took the form of various decrees, and were chiefly aimed at drastically curtailing marriages.

They were taken in close connection with yet another measure, the so-called German People's List (Deutsche Volksliste). This list was introduced for Poland and was later extended to other foreign nationals. It classified Polish citizens into four groups. Group 1 included so-called ethnic Germans who had taken an active part in the struggle for the Germanization of Poland ; Group 2 included those ethnic Germans who had not taken such an active part, but had " preserved " their German characteristics ; Group 3 comprised individuals of alleged German stock who had become " Polonized," but who it was believed, could be won back to Germany, and also persons of non-German descent married to Germans or members of non-Polish groups, who were considered desirable so far as their political attitude and racial characteristics were concerned. Finally, Group 4 comprised persons of German stock who had become politically merged with the Poles. After registration in the List, individuals from Groups 1 and 2 became automatically German citizens. Those from Group 3 acquired German citizenship subject to revocation, and those from Group 4 received German citizenship through naturalization proceedings. Persons ineligible for the List were classified as stateless, and all Poles from the occupied territory, that is from the Government General of Poland, as distinct from the incorporated territory, were classified as non-protected.

By a decree of 25th April, 1943, classes protected under the List were allowed to marry among themselves subject to restrictive measures. Re-

strictions were imposed by Himmler, who raised the marriageable age to 28 for men and 25 for women. According to the decree of 25th April, 1943, persons protected and persons non-protected were prohibited from intermarrying without special permission from the Main Staff Office.

An earlier decree of 9th February, 1942, provided that persons from Group 3 were prohibited from marrying persons from Group 4, persons of alien race, or Germans holding citizenship subject to revocation who were not classified in Group 3. And there were further restrictions of a similar nature.

According to a memorandum issued by the Prague office of RUSHA on 6th August, 1944, persons of Polish and Ukrainian descent were to be prevented " as a matter of principle " from marrying each other.

It soon became apparent that in spite of all the above decrees, the measures undertaken were not bringing forth the desired results. As recorded at a conference between members of RUSHA and VOMI it was established that " because of the raising of the marriage age for Poles the number of legitimate children was reduced, resulting in an increase of the number of illegitimate children." The conference recommended the following measures to discourage the birth of illegitimate children :

> " With regard to the question of reducing the number of illegitimate children, it was the general concensus of opinion to allow the unwed Polish mothers a minimum subsistence for the care of the child, the subsistence to be paid for by the Polish fathers and to be paid out only if the care of the child is not assured by either the unwed mother or her family. This was to prevent any negligence. Here it must be the primary principle not to spend one German penny for Polish welfare. This method of putting the illegitimate, racially undesirable Polish child at a definite disadvantage, even though it will not, in general, reduce the number of illegitimate children, will at least not encourage a rise in the number of illegitimate children. The Main Race and Settlement Office suggested that the father of the illegitimate child be required to make especially large payments, but that the money become part of a general fund from which the necessary sums might then be paid out. In cases where the paternity cannot be established, all potential fathers will be equally liable to payment. This measure is not likely to increase the pleasure of having an illegitimate child ; all surplus money might be turned over to German youth welfare. . . ."

More far-reaching measures were undertaken concerning the prevention of births to foreign women working on farms in Germany, as a result of sexual intercourse with foreign workers. The following measures were introduced :

> " Comprehensive sterilization of such men and women of alien blood in German agriculture who, on the basis of our race laws—to be applied even more strictly in these cases—have been declared inferior with regard to their physical, spiritual and character traits.
>
> " A ruthless but skillful propaganda among farm workers of alien blood, to the effect that neither they nor their children, produced on the soil of the German people, could expect much good, in other words

immediate separation between parents and children, eventually complete estrangement; sterilization of children afflicted with hereditary disease . . ."

"An inconspicuous distribution of contraceptives among farm workers of alien blood.

"General and strictest compliance with the principle of taking away for good from their mothers all newly born children of female farm workers of alien blood as well as children of German women if the father is of alien race, at the latest 4 weeks after their birth, and then sending them to geographically remote homes. . . ."

The evidence showed that those involved in the execution of these measures were the members of RUSHA, VOMI and the Main Staff Office. Representatives of the first two made suggestions concerning measures to be enacted, and requested and obtained the right to have individual cases decided by Higher SS and Police Leaders, which resulted in decisive intervention on the part of the Main Staff Office. The latter prepared the decrees concerning marriages. Greifelt signed several of them. Lorenz, as Chief of RUSHA, and Brueckner as Chief of Amt VI (RUSHA's office safeguarding the German race in the Reich), were responsible for the actual crimes committed pursuant to the above programme. VOMI was also involved, and Hofmann and Hildebrandt had, here again, full knowledge of the programme and actively took part in its execution.

(viii) *Forced Evacuations, Resettlement and Germanization of inhabitants of occupied territories*

By far the most important in scope and consequences was the method of imposing Germanism by forcibly evacuating and resettling inhabitants of occupied countries, and subjecting them to Germanization and slave labour.

Evacuations and resettlement were conducted in connection with the classification of the populations affected under the scheme of the German People's List. In addition to the four groups previously explained, a subdivision was made within each group which included three categories of cases. 'C' cases concerned those regarded to be racially and politically reliable; 'A' cases concerned those considered to be less politically reliable, but still of racial value; 'S' cases comprised the remainder, that is individuals found to be of alien blood and of no racial value. Generally, 'C' cases were transferred from their country of origin to the Eastern territories incorporated to the Reich, it being assumed that they would speed up Germanization of these territories. As being less reliable, 'A' cases were transferred to Germany proper in order to be more easily absorbed. The remainder, *i.e.*, 'S' cases, were either evacuated to the Government General of Poland or else confined in concentration camps and/or used as slave labour.

Evacuations of local inhabitants took place in all territories designated to become German by the bringing in of German resettlers. They affected in the first place Poles, but were soon followed by Yugoslavs from Slovenia and Frenchmen from Luxembourg, Alsace and Lorraine. German resettlers came to take their place from many other countries, including Russia, Poland and Greece. One way in which this was implemented can be illus-

trated by a directive issued by Greifelt regarding the resettlement of the Yugoslav population from Slovenia (Southern Corinthia) :

> " The Slovenian intelligentia will be submitted to a racial examination. The racially valuable elements (groups I and II) will not be evacuated to Serbia but will be transferred to Germany proper to be Germanized.
>
> " The above change does not affect the ordinance to the effect that a sharp selection will be made from among the native population of Southern Corinthia and that the undesirable population must be evacuated in accordance with existing directives."

The whole scheme was operated by coercion with the constant use of intimidation, deceit or mere force. Most of those affected, both evacuees and resettlers, were compelled to pass through the German People's List procedure and then to leave their native land. By January, 1944, nearly 3 million Poles alone had been registered under the List procedure, and hundreds of thousands had been deported to the Government General or to the Reich as slave labour. A corresponding number of resettlers were transferred from their countries and resettled on the Polish property left behind by those evacuated.

All these forcible transfers of populations were carried out in most inhumane conditions. Shortly after Poland was conquered, the German Commander-in-Chief in the East made the following descriptions of the existing state of affairs in a draft report :

> " The resettlement scheme is causing particular and steadily increasing alarm in the country. It is quite obvious that the starving population, struggling for its very existence, can regard the wholly destitute masses of evacuees, who were torn from their homes over night, as it were, naked and hungry, and who are begging shelter from them, only with the greatest anxiety. It is only too understandable that these feelings are intensified to immense hatred by the numerous children starved to death on each transport and the train loads of people frozen to death . . ."

Himmler himself, in a speech to Party comrades, acknowledged that during evacuations people froze to death on transport trains in the East, but he said : " I imagine that we have to be ruthless in our settlement, for these provinces must become Germanic, blond provinces of Germany."

Strict instructions were issued to apply ruthless methods. The Nazi Governor-General of Poland, Frank, submitted the following report to Hitler on 25th May, 1943, on the deteriorating position in Poland :

> " According to my own conviction, the reason for the complete destruction of public order is to be found exclusively in the fact that the expelled persons were in some cases given only 10 minutes and in no case more than 2 hours, to scrape together their most necessary belongings to take with them. Men, women, children and old people were brought into mass camps, frequently without any clothing or equipment ; there they were sorted into groups of people fit for work, less fit for work and unfit for work (especially children and aged persons), without regard to possible family ties. All connections between the members of families were thus severed, so that the fate of one group remained

unknown to the other. It will be understood that these measures caused an indescribable panic among the population affected by the expulsion, and led to it that approximately half of the population, earmarked for expulsion, fled. They fled, in their despair, from the expulsion district and have thus contributed considerably to the increase of the groups of bandits which existed for some time in the Lublin district and which act with continuously increasing audacity and force."

The evidence examined by the Tribunal disclosed the implication in the above policy of Germanization of the Main Staff Office of RKFDV, involving in particular, Greifelt and Creuz as Higher SS and Police leaders and Himmler's deputies, and also of VOMI and RUSHA and their leading staff. A decree of Himmler of 9th May, 1940, contained by implication the following general reference to the above accused :

" Among the people of alien (not German) nationality in the annexed Eastern districts as well as in the Government General, there are often such who are eligible for Germanization on the basis of their racial suitability. I therefore ordered that a selection of the racially most valuable families of nordic nature be made, according to directives issued by me, and I intend to put them into plants in the old Reich. Since this is not a question of utilization of labor in the ordinary sense, but an extremely important national-political task, the accommodation of this group of persons cannot be done in the usual way through the labor offices.

" For this reason I entrust the Higher SS and Police Leaders in their capacity as my deputies for the Strengthening of Germanism with this task of the distribution of people and at the same time with the utilization of this group of persons. . . . It should be endeavoured to accommodate able-bodied sons and daughters, who are not necessarily needed in the same plant, in other, more distant places."

Other documentary evidence showed the part taken by Greifelt and the Main Staff Office. Thus, apart from his already quoted directive concerning Slovenes from Yugoslavia, in a letter to Himmler of 22nd September, 1941, regarding racial examinations of inmates of Baltic refugee camps, Greifelt reported that 70 per cent. were " fit for immediate labour service " ; that 28.5 per cent. were " foreign elements which should be brought back to their land of origin " ; and that 1.5 per cent. were " considered as politically incriminated or suspected or asocial " and were " as such to be handed to the Chief of the Security Police for commitment to a concentration camp." In another report to Himmler of 19th November, 1941, concerning the settlement of Lithuanian Germans, Greifelt suggested a complete resettlement scheme, including the disposal of property of those deported. He also issued express instructions regarding the slave labour of persons deported from Alsace, Lorraine and Luxembourg. It was shown that Creuz, Greifelt's deputy, had similarly been responsible for plans and orders. In the matter of the use of undesirable inhabitants as slave labour, he outlined the entire re-Germanization programme in a report of 25th March, 1943, in the following terms :

" The selection of the persons is made by the Branch office of the SS Main Race and Settlement Office, Litzmannstadt.

" The persons found suitable for being Germanized will be turned over to the individual Higher SS and Police Leaders in Germany proper according to the plannings to be drawn up by the Main Staff Office.

" The Higher SS and Police Leaders are competent for the selection of the work assignments . . . ; the definite decision, . . . is theirs exclusively. . . .

" Until 31st January, 1943, 14,592 persons from the former Polish territories have been selected by the Branch Office of the SS Main Race and Settlement Office and were transferred into Germany proper. . . .

" It is emphasised that the care of the persons suitable for re-Germanization shall not degenerate into an exaggerated kind of welfare. It was also often necessary to discipline some obstinate persons in the harshest manner and to keep them in line through the use of compulsory measures.

" If there still exists, as is understandable, a lack of willingness for re-Germanization, it is nevertheless to be expected that the next generation, on account of its racial orientation, will have almost completely merged with Germanism. The case and education of juveniles is therefore considered the main task in the procedure of re-Germanization."

Slave labour included also the use of young girls as domestic workers in German households. In a decree of 9th October, 1941, Himmler ordered as follows :

" One of the greatest calamities is at present the shortage of female domestic help, especially in families with many children.

" I therefore order that girls of Polish and Ukrainian descent, who meet the requirements of the racial evaluation groups I and II shall be selected by the racial examiners of the Main Race and Settlement Office and shall be brought into the Reich territory. The selection is not to be limited only to those persons who are to be evacuated, but, as far as possible, to all available girls. In this connection not only the Warthegau but also the other incorporated Eastern Territories, the General Government and, after prior understanding is reached with locally competent offices, the former Esthonian, Latvian and Lithuanian territories are to be considered.

" Assignments may only be made to households of families with many children who are firm in their ideology and fit for training such girls."

Domestic servants thus forcibly brought to Germany were also subjected to Germanization. In a report to Himmler of 20th February, 1942, Creutz stated the following :

" Regarding the status of the allocation of female domestic help eligible for re-Germanization I wish to report as follows :

" 521 female domestics suitable for re-Germanization were allocated to non-farming households until 31st December, 1941 (total number of allocated persons including children : 10,520).

" The selection of the persons eligible for re-Germanization is made by the Field-Office of the SS-Main Race and Settlement Office in Litzmannstadt. The allocation in the Reich is carried out by the locally competent Higher SS and Police Leaders.

" The Field Office of the SS-Main Race and Settlement Office makes its selections primarily from among the evacuated Poles. In addition, pursuant to the personal order of the Reichsfuehrer-SS, it has the responsibility of removing qualified female domestics, eligible for re-Germanization, from the re-incorporated Eastern territories (especially from the Warthegau), and of transferring them to the Reich proper. It receives the names of girls in the Warthegau through my deputy. Furthermore, it contacted the local employment offices and welfare offices in the allocation of the girls."

The evidence regarding RUSHA disclosed that it took part in the entire scheme of resettling and Germanizing foreign populations and using them as slave labour. In all three of these closely connected operations RUSHA carried out its usual task of selecting and racially evaluating the so-called ethnic Germans and foreigners. The treatment of all these persons depended on RUSHA's findings and recommendations. RUSHA's responsibility for racial examinations in this sphere as well is stressed in the following draft instructions for the Immigration Centre :

" The Race and Settlement Office (RUS) determine the racial suitability of the resettler according to general directions by the Reichsfuehrer-SS. The results are listed in a card index. This race and settlement card index is also centrally stored in Litzmannstadt and is consulted when determining the final settlement."

The examinations took place after the resettlers had been brought to VOMI camps. On the basis of ' A,' ' C ' and ' S ' classifications some resettlers were allowed to settle down in the Eastern territories, some were taken to Germany as labourers and some were sent to the Government General of Poland. Those chiefly responsible for these activities were Hofmann, Hildebrandt and Schwalm. Numerous documents were produced in evidence to this effect.

VOMI was implicated in the scheme in that it provided camps for the resettlers and was in charge of the latter at this particular stage. It operated some 1,500 to 1,800 camps and at the end of the war there were still hundreds of thousands of persons confined in these camps as resettlers, evacuees and slave labourers. Lorenz and Bueckner, as heads of VOMI bore full responsibility for the carrying out of this part of the scheme. The treatment of the inmates in the care of VOMI was illustrated by the following instructions issued to Lorenz by Himmler on 21st September, 1941 :

" The escape of a Slovene is to be reported immediately by the Camp Commander of the VOMI to the Gestapo. The Getapo, in turn, will notify immediately, the Higher SS and Police Leader Alpenland.

" The family of the escapee as well as his relatives will be removed immediately from the camp and be taken to a concentration camp. Their children will be taken away from them and sent to a home.

" At once investigation has to be made in the camp in order to determine who knew of the proposed escape and aided it. All men

who knew about the escape and lent a helping hand will be hanged in the camp."

(ix) *Compulsory Conscription of Enemy Nationals into the Armed Forces*

The racial policy of the Nazis was carried out also by forcibly drafting into the German armed forces foreign subjects of real or alleged German stock. The evidence disclosed that tens of thousands of such foreign nationals, after having been registered in the German People's List procedure, were conscripted into the Waffen-SS, or into the regular armed forces. Thus, for instance, the following facts were discovered in an information bulletin of 28th September, 1943 :

> " The first more extensive recruiting of ethnic Germans for the Waffen-SS took place in Rumania in 1940. This was done under the pretence of recruiting labor for the Reich. In a later, second action, a thousand men belonging to this ethnic German group in Rumania were recruited. At that time these recruitments were not made for the purpose of strengthening the German army but with the idea—strongly backed by the Repatriation Office for Ethnic Germans (VOMI) and the present SS-Obergruppenfuehrer Berger, that the participation of the ethnic Germans in the war within the ranks of the Waffen-SS would cause a still closer union between these ethnic German groups and the German people, and, especially after the war, in territories settled by ethnic Germans, lead to the development of a veteran's generation like those in the German Reich. . . .
>
> " The political situation in the Serbian Banat made it possible, after the dissolution of the Jugoslav state, to collect the ethnic Germans living there into a unit, called the SS-division ' Prinz Eugen.' Above and beyond this all further available men of the ethnic German group in the Banat fit for service, were drafted into the police forces or served as temporary policemen in the Banat. Of the ethnic German group in the Banat and Serbia, counting approximately 150,000 ethnic Germans, 22,500 are serving in the aforementioned units, that is to say, more than 14% of this whole number."

The same bulletin gave a list, country by country, of the " allotment of German ethnic groups," enumerating the total number of persons in the Waffen-SS and Wehrmacht. The following two entries are typical examples : " Rumania, Waffen-SS, 54,000 ; Slovakia, Waffen-SS, 5,590, Wehrmacht 257."

Orders were issued to carry out enlistments with the use of compulsory measures and to punish the recalcitrants. This fact was stressed in a letter to the SS-Main Office of 12th July, 1943 :

> " . . . the SS and police court in Belgrade reported on 14th August, 1942, that the E.g. volunteer division Prince Eugen no longer was an organisation of volunteers, that on the contrary, the ethnic Germans from the Serbian Banat were drafted to a large extent under threat of punishment by the local German leadership, and later by the replacement agency."

One of the punishments was the confinement to a concentration camp, and towards the end of the war they also included executions. This latter fact

was proved by a letter dated 28th September, 1944, from the Higher SS and Police Leader, Southeast, to deputies of the RKFDV :

> " In the individual case of a member of group 3 who refused acceptance of the German People's List identification card in order to avoid being drafted into the army, the Reichsfuehrer has decided that in this and similar cases firm action will have to be taken and has ordered the execution of the individual in question.
>
> " If, in spite of having been properly instructed, persons enrolled in the German People's List should refuse acceptance of their German People's List identification cards a motion for special treatment will have to be submitted in future."

It will be remembered that " special treatment " meant death by hanging.

Those of the accused charged specifically for this type of offence were Lorenz and Brueckner. The Tribunal was satisfied with the evidence concerning Lorenz's guilt, but found that the evidence submitted against Brueckner was " insufficient " to establish his culpability.

(x) *Plunder of Public and Private Property*

The execution of the racial programme in the sphere of forcible resettlement lead to extensive plunder of private and public property by the Office for the Strengthening of Germanism and the associated organisations.

In August, 1942, Greifelt submitted a report to Himmler concerning the incorporated territories in Poland. The report revealed that, in four Eastern " Gaus " only, the total number of confiscated farms and estates amounted to 626,642 with an approximate total area of 14 million acres.

No compensation was ever paid for the land confiscated, and the only compensation envisaged at one time, without ever being made, was that concerning the land in the Government General of Poland. This was shown in a memorandum of Greifelt concerning a conference held with Hitler on 12th May, 1943 :

> " The Reichsfuehrer SS has pointed out that the property in question in the incorporated Eastern territories was formerly German property which was robbed in 1918 and for which no one can demand compensation. On the other hand, the situation in the Government General is different since the Poles there are still owners of their property. In so far as this property will be utilised for German resettlement measures, one could, therefore, consider a compensation for the previous owner."

With regard to property confiscated from Jewish owners no compensation at all was contemplated. This was disclosed in another memorandum of Greifelt's, written in December, 1942, where it was stated that " the Reichsfuehrer SS (Himmler) had signed a general directive whereby the entire Jewish real estate was to be placed at the disposal of the Office for the Strengthening of Germanism."

The fact that confiscations were carried out in order to Germanize the territories affected, was stressed by Greifelt in a letter to Himmler of 23rd February, 1941 :

> " After having issued your carrying-out decree concerning the treatment of the population in the Eastern occupied countries of 12.9.1940,

you will find it necessary to issue instructions concerning the treatment of the property belonging to persons included in Groups III and IV of the ' List for the Repatriation of German ethnic Groups ' and this for the agricultural as well as for the trade sections. . . .

" In the interest of Germanizing the country as fast and as effectively as possible and of separating from both these groups their property located in the occupied Eastern territories as soon as feasible, my office is of the opinion that real estate situated in the Annexed Eastern areas, and belonging to members of Groups III and IV of the List should be expropriated. . . .

" My office proposes to expropriate the property of these persons under the law concerning the treatment of property belonging to nationals of the former Polish State. . . ."

Confiscations were carried out in such a ruthless and indiscriminate manner that it caused the Reich Minister of Justice to enter a protest against the extent of confiscation of Polish property. In a letter to Hitler of 22nd May, 1942, the Minister reported the following :

" During the execution of this order . . . the Poles were robbed not only of their technical appliances but also of their food and personal articles and clothes.

" The Polish inhabitant who has been left practically without means after the extent of the confiscation, has become very agitated, which might result in further expressions of hate and acts of sabotage against Germans. The action will also have bad effects as far as nutrition policies are concerned."

To this Greifelt replied on 8th July, 1942, in the following terms :

" Since these Poles began to steal the fodder for their animals after they had lost their agricultural enterprises, and furthermore because the resettlers were in want of the missing live and dead stock which belonged to the farms, it became necessary for economic reasons to confiscate this stock and to return it to the now German farms, to which it belonged."

In addition to ruthlessness special care was taken to carry out confiscations in the utmost secrecy and hide them from public opinion at large. Opposing a loan plan which had been suggested by the Reich Minister of Finance, Greifelt wrote to Himmler on 21st October, 1943 :

" On the basis of this figure it would be possible for everybody in foreign countries to calculate that the entire Polish house property without exceptions has been confiscated. The reasons for hesitation dictated by international law and foreign policy which in 1940 were conclusive for formulating the ordinance concerning Polish property in such a way that it could not be realised by any uninitiated person that actually all Polish property was supposed to be confiscated, would thus be thrown overboard."

VOMI was directly connected with this policy of plunder. The evidence showed that many confiscations took place for the purpose of using the property for the housing of resettlers. Such confiscations were carried out by Lorenz under the guise of requisitions. Greifelt gave the following account

of VOMI's activities in this respect in a letter to Himmler dated 17th December, 1940 :

> " Realising the impossibility of providing temporary housing accommodation for the resettlers by normal lawful means the Office for the Repatriation of Racial Germans was empowered by an authorisation issued by the Reichsfuehrer on 30th December, 1939, to requisition lodging space suitable for the communal housing of Racial German resettlers.
>
> " On the strength of this authority the Office for the Repatriation of Racial Germans has requisitioned a large number of inns, hospitals, sanatoria, old people's homes and especially convents. To a large extent this requisitioning was done with full collaboration of the minor administrative authorities."

Lorenz spoke openly of confiscations for Germanization purposes in a letter to Himmler's secretary, Brandt, of June, 1943 :

> " . . . Another reason for the maintenance of the camps . . . is the following :
>
> " The buildings confiscated there for the accommodation of resettlers mainly come from former church property. An unrestricted surrender of this property to the Wehrmacht, the National Socialist Public Welfare Organisation, etc., undoubtedly would result in this property gradually returning to the hands of the previous clerical owners. In order to prevent such a development, which is undesirable to the Reichsfuehrer-SS, I have so far, persistently opposed the surrender of these camps."

The allegation of the prosecution that " Lebensborn," and more particularly its leading members Sollmann, Ebner, Tesch and Viermetz, were also involved in the plunder of property, was dismissed by the Tribunal on the following grounds :

> " While it appears from the evidence that Lebensborn utilised certain property formerly belonging to Jews, such as several hospitals, old people's homes, and children's homes, it further appears that these properties had already been confiscated by other agencies and were empty at the time Lebensborn took them over. . . . While there is evidence to the effect that in isolated instances Lebensborn also utilised a small amount of personal property for the welfare and maintenance of children under Lebensborn care, it has not been established beyond a reasonable doubt that Lebensborn actually confiscated such property without payment ; nor has it been established that any defendant connected with Lebensborn was connected with any plan or programme to plunder occupied territories."

(xi) *The Charge of Euthanasia*

One of the accused, Hildebrandt, was charged " with special responsibility for and participation in the extermination of thousands of German nationals pursuant to the so-called ' euthanasia programme ' of the Third Reich." The evidence submitted by the prosecution was that a unit under him killed thousands of insane Germans in the area of Danzig, which the Nazis treated as incurable and doomed to die of their illness.

The Tribunal dismissed this charge on the grounds that the administration of death under Nazi legislation against citizens of the Third Reich only, did not constitute a crime against humanity.(1)

(xii) *Persecution and Extermination of the Jews*

The Tribunal decided that charges brought against the defendants under this count had been established and proved in the parts dealing with punishments for sexual intercourse with Germans, deportations of foreign nationals, and plunder of property, as the victims in all these instances included Jews.

3. THE JUDGMENT OF THE TRIBUNAL

(i) *Individual Guilt of the Accused*

Thirteen accused were found guilty on one or more counts, and one was acquitted. Some were found guilty of only membership in criminal organisations. The counts referred to by the Tribunal were the following: Count 1, crimes against humanity; Count 2, war crimes; Count 3, membership in a criminal organisation.

Those found guilty were the following and for the following reasons:

ULRICH GREIFELT

" The defendant Ulrich Greifelt, as Chief of the Main Staff Office and deputy to Himmler, was, with the exception of Himmler, the main driving force in the entire Germanization program. By an abundance of evidence it is established beyond a reasonable doubt, as heretofore detailed in this judgment, that the defendant Greifelt is criminally responsible for the following actions: kidnapping of alien children; hampering the reproduction of enemy nationals; forced evacuations and resettlement of populations; forced Germanization of enemy nationals; the utilisation of enemy nationals as slave labor; and the plunder of public and private property.

" The evidence submitted is insufficient to establish beyond a reasonable doubt the defendant Greifelt's guilt upon the following specific charges: Abortions on Eastern workers; taking away infants of Eastern workers; and the punishment of foreign nationals for sexual intercourse with Germans.

" The defendant Greifelt is found guilty upon Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Greifelt was a member of a criminal organisation; that is, the SS, under the conditions defined and specified by the Judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment."

RUDOLF CREUTZ

" Rudolf Creutz, as deputy to Greifelt, was an active participant in certain phases of the Germanization program, as has heretofore been set forth in detail in this judgment; and it has been established beyond any reasonable doubt that the defendant Creutz is criminally responsible for, and implicated

(1) For more details, see pp. 33-34, below. See also *Trial of Erhard Milch*, Vol. VII of this Series, pp. 51-52.

in, the following criminal activities : the kidnapping of alien children ; the forced evacuation and resettlement of populations ; the forced Germanization of enemy nationals ; and the utilisation of foreign nationals as slave labor.

" Upon the following specific charges the evidence is insufficient to justify a conclusion of guilt : Abortions on Eastern workers ; taking away infants of Eastern workers ; punishment of foreign nationals for sexual intercourse with Germans ; and hampering the reproduction of enemy nationals.

" The defendant Creutz is found guilty upon Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Creutz was a member of a criminal organization ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment."

KONRAD MEYER-HETLING

" Konrad Meyer-Hetling was Chief of the Planning Office within the Main Staff Office. During his entire period of service in this position, he was a part-time worker only, still retaining a professorship at the university of Berlin. Meyer-Hetling is a scientist of considerable world renown—an agricultural expert.

" The prosecution's case rests principally upon the ' General Plan East,' a survey and proposed plan for the ' reconstruction of the East,' prepared by Meyer-Hetling at Himmler's request and submitted to Himmler on 28th May, 1942. It is the contention of the prosecution that this plan formed the basis for the measures taken in the incorporated Eastern territories and other occupied territories.

" A consideration of General Plan East, as well as correspondence dealing with this plan, reveals nothing of an incriminatory nature. This plan, as contended by the defendant, envisaged the orderly reconstruction of the East —and particularly village and country—after the war. The plan plainly stated : ' According to plan, the achievement of the work of reconstruction will be spread over five periods of five years each, totalling 25 years.' There is nothing in the plan concerning evacuations and other drastic measures which were actually adopted and carried out in the Germanization program. As a matter of fact, it is made quite plain by the evidence, as the defendant contended, that this General Plan East was never adopted and no effort was made to carry out its proposals. Actually, Himmler, instead of an orderly reconstruction, decided upon and pursued a drastic plan which in all its cruel aspects sought the reconversion of the East into a Germanic stronghold practically overnight. Of course, Meyer-Hetling is not responsible for these measures which he did not suggest.

" Simply by virtue of his position as chief of planning, the prosecution would have the Tribunal assume that Meyer-Hetling was the person responsible for all planning and, consequently, the drastic actions taken must have had their origin in his planning. The difficulty with such an assumption is that there is no proof to support it. He is charged, for instance, with such

criminal activities as kidnapping alien children, abortions on Eastern workers, and hampering the reproduction of enemy nationals. Yet in thousands of pages of documentary and oral evidence, there is not a single syllable of evidence even remotely connecting him with any of these activities.

" Upon the evidence submitted, the defendant Meyer-Hetling is found not guilty on Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Meyer-Hetling was a member of a criminal organization ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment.

OTTO SCHWARZENBERGER

" Otto Schwarzenberger was Chief of Finance in the Main Staff Office. As such, he dealt with the operational finances and expenses of all organizations charged in the indictment with participation in the Germanization program. He also handled operational finances of other organizations, such as DUT, DAG, EWZ, and UWZ.

" Schwarzenberger has contended throughout the trial that, as Chief of Finance, his duties consisted almost entirely of paying out funds on lump-sum requisitions submitted to him by various organizations, and that, as Chief of Finance, he had no power to approve or disapprove requisitions for funds, which was a duty resting solely with the Reich Minister of Finance. He contends, furthermore, that not even in the requisitions and bills submitted to his office was there anything indicating the purpose for which the funds were to be used or had been used, and he never had knowledge of the purposes for which these funds were being dispersed. Schwarzenberger's contentions are supported by an abundance of evidence. It would appear from the evidence that Schwarzenberger's principal task was to submit to the Reich Minister of Finance a budget containing the estimated operational needs of the various departments ; and upon approval by the Reich Minister of Finance, the funds were deposited with Schwarzenberger's office for payment to the various organizations.

" Volumes of documents have been introduced by the prosecution in this case—hundreds pertaining to the various organizations involved—and Schwarzenberger's name is conspicuous in its absence among these documents. No documentary evidence of any incriminatory nature has been offered against this defendant ; yet the prosecution would have the Tribunal assume, as it is argued, that he held numerous conferences with all departments with reference to all financial matters and was intimately acquainted with all activities of the various departments. This is an assumption which the prosecution bases wholly upon the position held by the defendant and which is not supported by proof.

" Upon the evidence submitted, the defendant Schwarzenberger is found not guilty on Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Schwarzenberger was a member of a criminal organisation ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment."

HERBERT HUEBNER

" As Chief of Labor Staffs and the Resettlement Staff in Posen, Herbert Huebner was concerned in the forcible evacuation and resettlement actions as well as the slave labor program. Within the area under his jurisdiction and supervision, these actions were carried out on a large scale. One document, written by him, suffices to show his connection with these actions. Huebner, on 29th August, 1941, wrote to the SS Settlement Staff at Lodz and Posen as follows :

> ' According to the newest order of the Reich-Governor, the Poles who will have to be displaced in the course of the settlement must under no condition leave the Warthegau,—*e.g.*, in order to be allocated for labor in Germany proper via the employment offices,—since the Poles will probably be needed later on as manpower (in this area). The Landraete (Chiefs of District Administration) will have to provide emergency work for them until large-scale projects will provide the possibility to make use of all available Polish manpower.
>
> ' The Reich Governor will instruct the Landraete to-morrow by circular letter to make all provisions to prevent the displaced Poles from leaving the Gau. The Landraete also were again urged to support the displacement measures in every way.
>
> ' I request you to comply with this order under all conditions and, where necessary, to instruct the Landraete to provide housing for the Poles to be displaced. In all cases they are to be informed in time of any planned displacement measures.'

" It has been established by the evidence beyond a reasonable doubt that the defendant Huebner actively participated in the forced evacuation and resettlement of foreign populations and the use of foreign nationals as slave labor.

" The evidence is insufficient to authorise a conclusion of guilt on the part of Huebner with regard to the other specifications of the indictment.

" The defendant Huebner is found guilty on Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Huebner was a member of a criminal organization ; that is, the SS, under the conditions defined and specified by the Judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment."

WERNER LORENZ

" The defendant Werner Lorenz, as chief of VOMI, was an active participant in practically every phase of the Germanization program, as has heretofore been set forth in detail in this judgment. The evidence establishes beyond any reasonable doubt that Lorenz is criminally responsible for and implicated in the following criminal activities : the kidnapping of alien children ; hampering the reproduction of enemy nationals ; the forced evacuation and resettlement of foreign populations ; the forced Germanization of enemy nationals ; the utilisation of enemy nationals as slave labor ; the forced conscription of non-Germans into the SS and armed forces ;

and the plunder of public and private property. The evidence is insufficient to authorise a conclusion of guilt with regard to forcible abortions on Eastern workers.

" The defendant Lorenz is found guilty upon Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Lorenz was a member of a criminal organisation ; that is, the SS, under the conditions defined and specified by the Judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment.

HEINZ BRUECKNER

" Heinz Brueckner, as head of the Amt VI of VOMI, actively participated in certain phases of the Germanization program, as has heretofore been set forth in detail in this judgment. It has been established beyond a reasonable doubt that this defendant is criminally responsible for and implicated in the following criminal activities : the kidnapping of alien children ; hampering the reproduction of enemy nationals ; the forced evacuation and resettlement of foreign populations ; the forced Germanization of enemy nationals ; and the utilisation of enemy nationals as slave labor.

" The evidence is insufficient to authorise a conclusion of guilt on the part of Brueckner with regard to the other specifications of the indictment.

" The defendant Brueckner is found guilty upon Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Brueckner was a member of a criminal organization ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is therefore, guilty upon Count 3 of the indictment.

OTTO HOFMANN

" Otto Hofmann, as chief of RUSHA from 1940 to 1943, actively participated in the measures adopted and carried out in the furtherance of the Germanization program, as has heretofore been set forth in detail in this judgment. The evidence establishes beyond any reasonable doubt Hofmann's guilt and criminal responsibility for the following criminal activities pursued in the furtherance of the Germanization program : the kidnapping of alien children ; forcible abortions on Eastern workers ; taking away infants of Eastern workers ; the illegal and unjust punishment of foreign nationals for sexual intercourse with Germans ; hampering the reproduction of enemy nationals ; the forced evacuation and resettlement of foreign populations ; the forced Germanization of enemy nationals ; and the utilization of enemy nationals as slave labor.

" The evidence is insufficient to prove this defendant's guilt with regard to the plunder of public and private property.

" The defendant Hofmann is found guilty upon Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Hofmann was a member of a criminal organization ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment."

RICHARD HILDEBRANDT

" Richard Hildebrandt was Higher SS and Police Leader at Danzig-West Prussia, from October, 1939, to February, 1943, and simultaneously he was Leader of the Administration District Danzig-West Prussia of the Allgemeine SS and Deputy of the RKFDV. From 20th April, 1943, to the end of the war, he was chief of RUSHA. From 1939 to 1945, while serving in these capacities, he was deeply implicated in many measures put into force in the furtherance of the Germanization program, as has heretofore been set forth in detail in this judgment. By an abundance of evidence, it has been established beyond a reasonable doubt that the defendant Hildebrandt actively participated in and is criminally responsible for, the following criminal activities : the kidnapping of alien children ; forcible abortions on Eastern workers ; taking away infants of Eastern workers ; the illegal and unjust punishment of foreign nationals for sexual intercourse with Germans ; hampering the reproduction of enemy nationals ; the forced evacuation and resettlement of populations ; the forced Germanization of enemy nationals ; and the utilisation of enemy nationals as slave labor."

On the charge of euthanasia the Tribunal, while finding Hildebrandt not guilty within the scope of its jurisdiction, made the following statement concerning the criminal nature of euthanasia :

" Hildebrandt, as the sole defendant, is charged with special responsibility for and participation in the extermination of thousands of German nationals pursuant to the so-called ' Euthanasia program.' It is not contended, that this program, insofar as Hildebrandt might have been connected with it, was extended to foreign nationals. It is urged by the prosecution, however, that notwithstanding this fact, the extermination of German nationals under such a program constitutes a crime against humanity ; and in support of this argument the prosecution cites the judgment of the International Military Tribunal as well as the judgment in the case of the United States of America *vs.* Brandt, Cast No. 1. Neither decision substantiated the contention of the prosecution. For instance, in holding defendants guilty in the Brandt judgment, the Tribunal expressly pointed out that the defendants, in participating in this program, were responsible for exterminating foreign nationals. The Tribunal expressly stated :

> ' Whether or not a state may validly enact legislation which imposes euthanasia upon certain classes of its citizens, is likewise a question which does not enter into the issues. Assuming that it may do so, the Family of Nations is not obliged to give recognition to such legislation when it manifestly gives legality to plain murder and torture of defenceless and powerless human beings of other nations.
>
> ' The evidence is conclusive that persons were included in the program who were non-German nationals. The dereliction of the defendant Brandt contributed to their extermination. That is enough to require this Tribunal to find that he is criminally responsible in the program.'

" It is our view that euthanasia, when carried out under state legislation against citizens of the state only, does not constitute a crime against humanity. Accordingly the defendant Hildebrandt is found not to be criminally responsible with regard to this specification of the indictment.

" The evidence is insufficient to implicate this defendant on the specification regarding the plunder of public and private property.

" The defendant Hildebrandt is found guilty upon Counts 1 and 2 of the indictment.

" The tribunal finds that the defendant Hildebrandt was a member of a criminal organization ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment.

FRITZ SCHWALM

" The defendant Fritz Schwalm was an active participant in certain phases of the Germanization program, as has heretofore been set forth in detail in this judgment. It has been established by the evidence beyond a reasonable doubt that this defendant is criminally responsible for and implicated in the following criminal activities conducted in the furtherance of this program : kidnapping of alien children ; the forced evacuation and resettlement of populations ; the forced Germanization of enemy nationals ; and the utilisation of enemy nationals as slave labor.

" Upon the other specifications of the indictment the evidence is insufficient to justify a conclusion of guilt on the part of this defendant.

" The defendant Schwalm is found guilty upon Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Schwalm was a member of a criminal organisation ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment."

MAX SOLLMANN

" The defendant Max Sollmann, as chief of Lebensborn—together with that institution—is charged with criminal responsibility in three specifications of the indictment, namely, the kidnapping of alien children, taking away infants of Eastern workers, and the plunder of public and private property. With two of these specifications we have already dealt. We now consider the charge concerning the kidnapping of alien children.

" It is quite clear from the evidence that the Lebensborn Society, which existed long prior to the war, was a welfare institution, and primarily a maternity home. From the beginning, it cared for mothers, both married and unmarried, and children, both legitimate and illegitimate.

" The Prosecution has failed to prove with the requisite certainty the participation of Lebensborn, and the defendants connected therewith, in the kidnapping program conducted by the Nazis. While the evidence has disclosed that thousands upon thousands of children were unquestionably

kidnapped by other agencies or organisations and brought into Germany, the evidence has further disclosed that only a small percentage of the total number ever found their way into Lebensborn. And of this number only in isolated instances did Lebensborn take children who had a living parent. The majority of these children in any way connected with Lebensborn were orphans of ethnic Germans. As a matter of fact, it is quite clear from the evidence that Lebensborn sought to avoid taking into its homes, children who had family ties ; and Lebensborn went to the extent of making extensive investigations where the records were inadequate, to establish the identity of a child and whether it had family ties. When it was discovered that the child had a living parent, Lebensborn did not proceed with an adoption, as in the case of orphans, but simply allowed the child to be placed in a German home, after an investigation of the German family for the purpose of determining the good character of the family and the suitability of the family to care for and raise the child.

" Lebensborn made no practice of selecting and examining foreign children. In all instances where foreign children were handed over to Lebensborn by other organizations after a selection and examination, the children were given the best of care and never ill-treated in any manner.

" It is quite clear from the evidence that of the numerous organizations operating in Germany who were connected with foreign children brought into Germany, Lebensborn was the one organization which did everything in its power to adequately provide for the children and protect the legal interests of the children placed in its care.

" Upon the evidence submitted, the defendant Sollmann is found not guilty on Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Sollmann was a member of a criminal organization ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment."

GREGOR EBNER

" Upon the evidence submitted, the defendant Gregor Ebner is found not guilty upon Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Gregor Ebner was a member of a criminal organization ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment.

GUENTHER TESCH

" Upon the evidence submitted, the defendant Guenther Tesch is found not guilty upon Counts 1 and 2 of the indictment.

" The Tribunal finds that the defendant Guenther Tesch was a member of a criminal organization ; that is, the SS, under the conditions defined and specified by the judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment."

INGE VIERMETZ

" Inge Viermetz was found not guilty on all counts and acquitted."

(ii) *The Sentences*

The five accused found guilty of membership in a criminal organisation only, that is Meyer-Hetling, Schwarzenberger, Sollmann, Ebner and Tesch, were sentenced to a term of imprisonment equivalent to the time already spent in custody as suspects and accused persons. This amounted to various terms of less than 3 years in each case.

The others were convicted as follows :

Greifelt	... ...	Imprisonment for life	
Crautz	... ...	,, ,,	15 years
Huebner	... ...	,, ,,	15 ,,
Lorenz	... ...	,, ,,	20 ,,
Brueckner	... ...	,, ,,	15 ,,
Hofmann	... ...	,, ,,	25 ,,
Hildebrandt	... ...	,, ,,	25 ,,
Schwalm	... ...	,, ,,	10 ,,

At the time of going to press these sentences had not been confirmed.

B. NOTES ON THE CASE

Of the crimes for which the accused were tried and convicted in this case two offences deserve special attention. One is the crime of genocide. It was taken by the prosecution and the Tribunal as a general concept defining the background of the total range of specific offences committed by the accused, which in themselves constitute crimes against humanity and/or war crimes.

The second offence is membership of criminal organisations. In previous reports it has been dealt with in a summary way with reference to provisions that have emerged in the recent past within the body of international law. As it deals with an entirely new concept in this sphere, and as it has given rise to numerous trials and convictions, the present Notes contain a full account of the origin and development of the crime of membership, of its meaning and of the rules under which it has been treated by courts of law in war crime trials.

For some criminal acts, such as plunder of public and private property, conscription into German forces of inhabitants of occupied countries, the reader is referred to notes made in connection with other trials.

These Notes end with an account of the relevance of some pleas submitted by the defence.

1. THE CRIME OF GENOCIDE[1]

Under Count one of the Indictment, the prosecution had charged that the accused " were connected with plans and enterprises involving . . . persecutions on political, racial and religious grounds and other inhumane acts against civilian populations, including German civilians and nationals of

[1] Genocide has also received reference in Vol. VI, pp. 32, 48, 75, 83 and 99, and some treatment in Vol. VII, pp. 7-9 and 24-6.

other countries, and against prisoners of war." This charge included the whole range of acts described in the part dealing with the evidence before the Tribunal, which acts were defined as constituting crimes against humanity and/or war crimes. The point made by the prosecution was that, insofar as crimes against humanity were concerned, all these " acts . . . plans and enterprises . . . were carried out as part of a systematic programme of genocide, aimed at the destruction of foreign nations and ethnic groups, in part by elimination and suppression of national characteristics."

In its judgment the Tribunal concurred with this view by stating that the entire programme carried out by the accused and their organisations was conceived and implemented " for one primary purpose . . . which may be summed up in one phrase: the two-fold objective of weakening and eventually destroying other nations while at the same time strengthening Germany, territorially and biologically, at the expense of conquered nations."

(i) *Origin and Substance of the Concept of Genocide*

The term of genocide was coined and its substance defined by Professor R. Lemkin of the United States.(1) The word itself is the amalgamation of the ancient Greek term *genos* (race, tribe) and the Latin *cide* (killing), and falls into the group of words such as homicide, infanticide and the like, " Generally speaking," said Professor Lemkin, " Genocide does not necessarily mean the immediate destruction of a nation. . . . It is intended rather to signify a co-ordinated plan of different nations aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. . . . Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group." The detailed objectives of such an action are directed towards the " disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups."

As an illustration of a given action falling within the scope of Genocide, the author referred to confiscations of property, such as precisely those tried in this case:

> " The confiscation of property of nationals of an occupied area on the ground that they have left the country may be considered simply as a deprivation of their individual property rights. However, if the confiscations are ordered against individuals, solely because they are Poles, Jews, or Czechs, then the same confiscations tend in effect to weaken the national entities of which these persons are members."

(ii) *Developments concerning the Concept of Genocide*

The concept of Genocide was used at the trial of the Nazi Major War Criminals before the International Military Tribunal at Nuremberg. The prosecution charged the defendants with having " conducted deliberate and

(1) See Raphael Lemkin, *Axis Rule in Occupied Europe*, Carnegie Endowment for International Peace, Washington, 1944, pp. 79-95.

systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial or religious groups." This fact was recognised by the International Military Tribunal in its Judgment in the following terms :

> " In Poland and the Soviet Union these crimes (*i.e.*, war crimes and crimes against humanity) were part of a plan to get rid of whole native populations by expulsion and annihilation, in order that their territory could be used for colonisation by Germans."(1)

Reference was also made to mass deportations, slave labour and the hampering of the native biological propagation.

The subject of genocide and its place in contemporary international law was taken up by the United Nations. On 11th December, 1946, the General Assembly of the United Nations adopted a resolution in which it declared genocide a crime under the existing international law and recommended the signing of a special convention for its repression in the future. This resolution read as follows :

> " 1. Whereas, genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings, and such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented in these human groups, and is contrary to moral law and to the spirit and aims of the United Nations ;
>
> " 2. Whereas, many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part ;
>
> " 3. And whereas, the punishment of the crime of genocide is a matter of international concern ;
>
> The General Assembly
>
> Affirms that genocide is a crime under international law which the civilised world condemns, and for the commission of which principals and accomplices, whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds, are punishable ;
>
> Invites the Member States to enact the necessary legislation for the prevention and punishment of this crime ;
>
> Recommends that international co-operation be organised between states with a view to facilitating the speedy prevention and punishment of the crime of genocide, and
>
> To this end, the General Assembly requests the Economic and Social Council to undertake the necessary studies, with the view of drawing up a draft convention on the crime of genocide to be submitted to the next ordinary session of the General Assembly."

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(1) *Judgment of the International Military Tribunal for the Trial of German Major War Criminals ;* London, H.M. Stationery Office, 1946, p. 52.

As a result, and after nearly two years of study, the General Assembly of the United Nations adopted on 9th December, 1948, a Convention on the Prevention and Punishment of the Crime of Genocide. The Convention contains 19 Articles, the most important of which read as follows :

" *Article* 1

" The contracting Parties confirm that genocide whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.

" *Article* 2

" In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group, as such :

(*a*) killing members of the group ;

(*b*) causing serious bodily or mental harm to members of the group ;

(*c*) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ;

(*d*) imposing measures intended to prevent births within the group ;

(*e*) forcibly transferring children of the group to another group.

" *Article* 3

" The following acts shall be punishable :

(*a*) Genocide ;

(*b*) Conspiracy to commit genocide ;

(*c*) Direct and public incitement to commit genocide ;

(*d*) Attempt to commit genocide ;

(*e*) Complicity in genocide.

" *Article* 4

" Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

" *Article* 6

" Persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

" *Article* 7

" Genocide and the other acts enumerated in Article 3 shall not be considered as political crimes for the purpose of extradition.

" The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force."(1)

As can be seen the offences enumerated in Article 2 of this Convention cover practically the entire field tried in this case. The most conspicuous

(1) See *United Nations Bulletin*, Vol. 5, No. 12, 15 December, 1948, pp. 1012-1015.

instances are abortions, punishments for sexual intercourse, preventing marriages and hampering reproduction, and the measures undertaken for forced Germanization, including the kidnapping or taking away of children and infants, the deportation and resettlement of populations, and the persecutions of Jews.

The adopted text was opened to Signature and ratification on 10th December, 1948. A separate Resolution was adopted requesting the International Law Commission of the United Nations to study the possibility of establishing a criminal chamber of the International Court of Justice at The Hague, for the trial of persons charged with genocide.

(iii) *Relationship between Genocide and Crimes against Humanity*

The general concept of genocide has been recently redefined by Professor Lemkin in the following terms :

> " There are three basic phases of life in a human group ; physical existence, biological continuity (through procreation), and spiritual or cultural expression. Accordingly, the attacks on these three basic phases of the life of a human group can be qualified as physical, biological, or cultural genocide. It is considered a criminal act to cause death to members of the above-mentioned groups directly or indirectly, to sterilize through compulsion, to steal children, or to break up families. Cultural genocide can be accomplished predominantly in the religious and cultural fields by destroying institutions and objects through which the spiritual life of a human group finds expression, such as houses of worship, objects of religious cult, schools, treasures of art, and culture. By destroying spiritual leadership and institutions, forces of spiritual cohesion within a group are removed and the group starts to disintegrate. This is especially significant for the existence of religious groups. Religion can be destroyed within a group even if the members continue to subsist physically."(1)

As it is conceived in the above quoted Convention, genocide is a crime as much in time of peace as in time of war. This is one of its distinctive features in comparison with crimes against humanity. The latter were recognised as crimes arising out of or in connection with a war of aggression. This feature derives from Art. 6 (*c*) of the Charter of the International Military Tribunal, of 8th August, 1945, which defines crimes against humanity as offences committed " in execution of or in connection with any crime within the jurisdiction of the Tribunal." The latter is a reference to crimes against peace and war crimes, which both fall into the part of international law dealing with war. The appurtenance of crimes against humanity to this particular field of international law was stressed by the International Military Tribunal at Nuremberg in its Judgment concerning the Nazi major war criminals :

> " To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were,

(1) R. Lemkin, *Genocide as a Crime under International Law*, United Nations Bulletin, Vol. IV, No. 2, 15 January, 1948, p. 71.

it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime. The Tribunal therefore cannot make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter, but from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity ; and insofar as the inhumane acts charged in the Indictment, and committed after the beginning of the war, did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity."

On account of the fact, however, that crimes against humanity include "persecutions on political, racial or religious grounds," crimes against humanity of this nature fall within the concept of genocide when committed in time of war. In these particular circumstances the specific acts constituting genocide are at the same time crimes against humanity. In the opinion of one member—the French representative—of the United Nations Ad Hoc Committee which drew up the Draft Convention, genocide is even the most typical of the crimes against humanity.(1)

The fact that crimes against humanity are limited to offences punishable under the laws of war has not been altered by Law No. 10 of the Allied Control Council for Germany under whose terms the accused were tried. The definition of crimes against humanity in Art. II of Law No. 10 contains no reference to crimes against peace and war crimes, which are both offences punishable under the laws of war. On the other hand, under the terms of its Preamble, Law No. 10 was enacted "in order to give effect to the terms of the Moscow Declaration of 30th October, 1945, and the London Agreement of 8th August, 1945, *and the Charter issued pursuant thereto.*" According to Art. I of the same law "the Moscow Declaration . . . and the *London Agreement of 8th August*, 1945 . . . are made integral parts of this Law." This link may be thought to give the definition of crimes against humanity in Law No. 10 the same connotation as in the Nuremberg Charter, and has been so interpreted by most judicial authorities.(2)

It thus appears that genocide, as envisaged by the United Nations in its resolution of 11th December, 1946 and in the Convention on Genocide is a crime under international law in general and is therefore not limited to offences falling within the narrower scope of the laws of war. It becomes a *delictum iuris gentium* alongside offences such as piracy, trade in women and children, trade in slaves, the drug traffic, forgery of currency and the like.(3) In the trial under review, however, genocide was treated within the set of the circumstances of the case, that is as an offence perpetrated in time of war and committed through a series of individual acts constituting crimes against humanity. It therefore remained within the sphere of the laws of war and on this account fell within the jurisdiction of the Tribunal which tried the accused.

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(1) See Ad Hoc Committee on Genocide (5 April-10 May 1948), *Report of the Committee and Draft Convention drawn up by the Commission*, Economic and Social Council, E/794, 24 May 1948.

(2) See Vol. IX, p. 44.

(3) See R. Lemkin, *op. cit.*, p. 70.

(iv) *Relationship between Genocide and War Crimes*

In addition to cases where genocide is reflected in acts constituting crimes against humanity, there are cases in which it may be perpetrated through acts representing war crimes. Among these cases are those coming within the concept of forced denationalisation.

In the list of war crimes drawn up by the 1919 Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, there were included as constituting war crimes " attempts to denationalise the inhabitants of occupied territory." Attempts of this nature were recognised as a war crime in view of the German policy in territories annexed by Germany in 1914, such as in Alsace and Lorraine. At that time, as during the war of 1939-1945, inhabitants of an occupied territory were subjected to measures intended to deprive them of their national characteristics and to make the land and population affected a German province.

The methods applied by the Nazis in Poland and other occupied territories, including once more Alsace and Lorraine, were of a similar nature with the sole difference that they were more ruthless and wider in scope than in 1914-1918. In this connection the policy of " Germanizing " the populations concerned, as shown by the evidence in the trial under review, consisted partly in forcibly denationalising given classes or groups of the local population, such as Poles, Alsace-Lorrainers, Slovenes and others eligible for Germanization under the German People's List. As a result in these cases the programme of genocide was being achieved through acts which, in themselves, constitute war crimes.

2. MEMBERSHIP OF CRIMINAL ORGANISATIONS

Convictions of the accused for membership in criminal organisations were made in consequence and on the basis of an important and elaborate development in international law regarding this subject.

The concept of the crime of membership originated in the United Nations War Crimes Commission and later evolved in rules laid down by Governments as part of contemporary international law and implemented by the International Military Tribunal at Nuremberg and other courts, and still further developed in the municipal law of various nations.[1] The following is a survey of this evolution.

(i) *Emergence of the Concept in the United Nations War Crimes Commission*

In the earliest stages of the Commission's activities the opinion was expressed that in certain cases no other *prima facie* evidence of guilt of alleged war criminals was required than the fact that such individuals belonged to groups or organisations known to have been actively engaged in the systematic perpetration of criminal acts. The organisations and groups envisaged were those of the Nazis, such as the ill-famed Gestapo, the S.S. and the S.A. The argument was brought forward that the groups involved were so deeply engaged in mass criminality that to require evidence of individual guilt in each specific case would be an unnecessary and even impossible task. Cases were recalled where all the witnesses of an established crime, such as massacres, had disappeared as victims of the crime, and where the group

[1] For the Polish approach to this question see Vol. VII, pp. 5-7, 18-24 and 86-7.

which had committed the crime was identified as a whole. In such cases, it was argued, the mere fact of identifying at a later stage the individuals who were members of such a group created a serious presumption that they had all taken part in the commission of the crime. Therefore membership of the group introduced in itself a presumption of guilt, and " the real crime consisted in the mere fact of being a member operating in an oppressed country."

At the same time evidence was at hand in the Commission that groups or organisations such as the Gestapo, SS and SA had not pursued their criminal activities on their own initiative. This evidence led to the top of the Nazi State and Party machinery and disclosed a series of explicit instructions coming from the Nazi Government. Proposals were consequently made to treat the Nazi Government itself as a criminal group, as it was the originator and instigator of all the crimes perpetrated by groups subordinated to its authority.

At this stage the Commission did not feel authorised to take a stand which could in fact amount to the introduction of precise legal rules in this matter whilst such rules had hitherto been non-existent. It took the wiser course of expressing only recommendations as to what should be done by the Governments, who were in a position to make the law required by the novelty of mass criminality as practised by the Nazis. A thorough study of the facts concerning the groups and organisations at stake was made and on 16th May, 1945, the following recommendation was adopted :

> " (*a*) To seek out the leading criminals responsible for the organisation of criminal enterprises including systematic terrorism, planned looting and the general policy of atrocities against the peoples of the occupied States, in order to punish all the organisers of such crimes ;
>
> " (*b*) To commit for trial, either jointly or individually all those who, as members of these criminal gangs, have taken part in any way in the carrying out of crimes committed collectively by groups, formations or units."

The recommendation under (*a*) met the proposals made in regard to the Nazi Government, to the extent to which it included it under the general denomination of " leading criminals responsible for the organisation of criminal enterprises." The recommendations under (*b*) met the proposals regarding the necessity of imposing punishment for membership of groups for which it has been proved that they had committed crimes. All details were left aside, and in particular the questions as to whether or not membership in itself should warrant punishment, in which cases and under what rules of evidence. Such details were to be laid down during the trial of the Nazi major war criminals before the International Military Tribunal at Nuremberg.

(ii) *Development at the Nuremberg Trial of Nazi Major War Criminals*

The first, and for the time being, the only authoritative pronouncement on criminal groups or organisations on the basis of international law, was made during the trial of the German Major War Criminals by the International Military Tribunal at Nuremberg. The pronouncement was made by the Tribunal on the basis of specific provisions of the Charter, which

defined its jurisdiction and procedure, and after considering specific charges brought by the Prosecutors. The latter played a very prominent part in defining the boundaries of the concept of collective penal responsibility and contributed largely to the final decision of the Tribunal. Both the law of the Charter and the Judgment of the Tribunal introduce a novel method of dealing with organised mass criminality of a type which is itself new in many respects. The Judgment can be regarded as a judicial precedent with far reaching effect. One of its legal effects was that the decision of an international court had, to a certain extent, become binding upon other national or local courts, and that it had introduced an effective judicial means of combating mass criminality organised by States against other States and nations.

(a) The Law of the Charter

The defendants at the Nuremberg Trial were all members of one or more Nazi groups or organisations, and in addition to bodies such as the Gestapo, S.S. or S.A., the prosecutors included in their Indictment bodies such as the General Staff and the High Command. The relevant provisions in the Nuremberg Charter are the following :

" *Article* 9

" At the trial of any individual member of any group or organisation the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organisation of which the individual was a member was a criminal organisation.

" After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organisation will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organisation. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

" *Article* 10

" In cases where a group or organisation is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organisation is considered proved and shall not be questioned.

" *Article* 11

" Any person convicted by the Tribunal may be charged before a national military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organisation and such court may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organisation."

The criminal acts for which a group or organisation may be declared criminal are those covered by the Charter in its Art. 6, *i.e.*, crimes against peace, war crimes and crimes against humanity.

It will be noted that the Charter does not define a " group " or " organisation." The matter is left to the appreciation of the Tribunal as a question of fact. The above provisions lay down the following rules or principles :

(*a*) A declaration of criminality in respect of a group or organisation can be made by the Tribunal on condition that any of the defendants before it is a member of such group or organisation.

(*b*) The declaration is an act within the discretionary power of the Tribunal, which is not bound to adjudicate on the issue if it does not deem it appropriate to do so.

(*c*) The declaration is confined to establishing the criminal nature of the group or organisation, and no punishment is pronounced against the individuals involved. This is left to the subsequent courts.

(*d*) Once a group or organisation is declared criminal by the Tribunal, the bringing of its members to trial is within the discretionary power of the Signatories to the Charter. The declaration does not bind them to prosecute such members.

(*e*) An individual brought to trial as a consequence of the declaration is prosecuted for the crime of " membership " in the group or organisation. This is particularly emphasised in the wording of Art. 11.

(*f*) The legal effect of the declaration is that in the subsequent proceedings of the court before which a member is brought to trial, the criminal nature of the group or organisation is considered proved and cannot be questioned.

The most important provision is undoubtedly the last, quoted under (*f*). A narrow, literal interpretation of its terms could lead to the conclusion that the mere fact of having belonged to an organisation declared criminal is in itself a crime without further qualifications, and that the subsequent court has no choice but to condemn the accused once he is brought before it. Such far-reaching conclusion was, however, not arrived at by the Tribunal, neither was it meant in the Charter or advocated by the majority of the prosecutors. Both the latter, and the Tribunal in its Judgment, laid down certain conditions in which a member should be regarded as personally guilty.

(*b*) *The Theory of Collective Criminality*

Judicial declarations of the criminal nature of given groups or organisations, as were envisaged by the Nuremberg Charter, are based upon the concept of collective criminality and liability as distinct from individual criminality and liability. The Charter left only partially answered the question of just what this concept meant in the sphere of penal law, and what consequences were implied as a result of the rule that a declaration made by the Nuremberg Tribunal could not be overruled by other courts.

The prosecutors undertook to provide the answers, and in doing so they constructed a precise and complete theory. The theory was evolved by the United States Chief Prosecutor, Justice Robert H. Jackson, one of the promoters and principal authors of the Nuremberg Charter and the leading figure at the Trial. It was endorsed by the other prosecutors, with certain not unimportant reservations expressed by the Russian prosecutor, and was accepted and confirmed by the Tribunal in its Judgment. This develop-

ment took place in response to a decision of the Tribunal requesting the prosecution and the defence to clarify in particular the tests of criminality which were to be applied, in view of the fact that the Charter did not define a criminal group or organisation. The theory can conveniently be described under three main items : the concept of collective criminality ; the legal nature of a declaration of criminality ; and the effects of such declaration.

The Concept of Collective Criminality. When presenting the case against criminal groups or organisations to the Tribunal, Justice Jackson made reference in the first place to the fact that the Charter did not introduce an entirely new legal concept. He referred to the legislation of different countries in which membership in certain collective bodies, as well as the bodies themselves, were considered criminal and their members prosecuted as such and quoted the following examples :

A United States Law of 28th June, 1940, provides that it is unlawful for any person to organise or help to organise any society, group or assembly of persons to teach, advocate or encourage the overthrow or destruction of any government in the United States by force or violence, or to be or become the member of, or affiliate with, any such society, group or assembly of persons knowing its purposes.

In Great Britain there were in the past laws of a similar nature, such as the British India Act No. 30 of 1836. It provided that " whoever was proved to have belonged to a gang of thugs " was to be punished with " imprisonment for life with hard labour."

The French Penal Code provides that any organised " association or understanding " made with the object of preparing or committing crimes against persons or property, constitute a crime against public peace.

The Soviet Penal Code contains provisions similar to those of the French Code, around the concept of the " crime of banditry."

The most striking references were those made to the German laws themselves. The German Penal Code of 1871 punished by imprisonment the " participation in an organisation, the existence, constitution, or purposes of which are to be kept secret from the Government, or in which obedience to unknown superiors or unconditional obedience to known superiors is pledged." In 1927 and 1928 German Courts treated the entire German Communist Party as criminal, and pronounced sentences against its Leadership Corps. Judgment against members of the Communist Party included every cashier, employee, delivery boy and messenger, and every district leader. In 1924 German courts declared the entire Nazi Party to be a criminal organisation. The German Supreme Court laid down general principles for any organisation liable to a declaration of criminality and stated that it was " a matter of indifference whether all the members pursued the forbidden aims." It was " enough if a part exercised the forbidden activity." It also considered irrelevant whether " members of the group or association agreed with the aim, tasks, means of working and means of fighting " and what their " real attitude of mind " was. In all such cases they were held guilty.

While referring to these precedents, Justice Jackson introduced the essence of the concept of collective criminality, through the notion of " conspiracy " as it evolved more particularly in English and American law.

The criterion provided by the latter, for determining whether the ends of the indicted organisations were guilty ends, was whether the organisations contemplated " illegal methods " or intended " illegal ends." If so, the responsibility of each member for the acts of every other member was not essentially different from the liability for conspiracy. The principles of the latter were that no formal meeting or agreement was necessary ; that no member was bound to know who the other members were and what part they were to take or what acts they had committed ; that members were liable for acts of other members, although particular acts were not intended or anticipated, if they were committed in execution of the common plan ; and, finally, that it was not essential to be a member of the conspiracy at the same time as the others or at the time of the criminal acts.

It was in connection with these firmly established precedents that the United States Chief Prosecutor submitted to the Tribunal the principles which, in his opinion and in that of his colleagues, should govern the concept of collective criminality. "We think," said Justice Jackson, " that on ordinary legal principles the burden of proof to justify a declaration of criminality is, of course, upon the prosecution." He then declared that this burden was discharged by answering the following four essential tests of criminality, which represent at the same time the fundamental elements of the concept of collective criminality :

(1) The group or organisation must be " some aggregation of persons associated in identifiable relationship with a collective, general purpose," or, as this was put by another United States prosecuting officer, with " a common plan of action." The notions of " group " or " organisation " are non-technical. They " mean in the context of the Charter what they mean in the ordinary speech of the people." The term " group " is used " as a broader term, implying a looser or less formal structure or relationship than is implied in the term organisation."

(2) Membership in such group or organisation " must be generally voluntary," that is " the membership as a whole, irrespective of particular cases of compulsion against individuals or groups of individuals within the organisation must not have been due to legal compulsion."

(3) The aims of the organisation " must have been criminal in that it was designed to perform acts denounced as crimes in Art. 6 of the Charter," that is crimes against peace, war crimes or crimes against humanity. The organisation " must have participated directly and effectively in the accomplishment " of these criminal aims and " must have committed " crimes from Art 6.

(4) The criminal " aims or methods of the organisation must have been of such character that its membership in general may properly be charged with knowledge of them."

As a fifth and last condition, required only for the purpose of enabling the Nuremberg Tribunal to make a declaration of criminality under the Charter, the United States Chief Prosecutor referred to the necessity of establishing that some individual defendant tried by the Tribunal had been a member of the organisation, and was guilty of some act on the basis of which the organisation was to be declared criminal.

Such were the elements of the concept of collective criminality as defined by the Prosecution and as lying at the root of the concept of " criminal organisation " and of a declaration under the Nuremberg Charter. It will be noted that with qualifications, such as voluntary membership and knowledge of the criminal purposes or acts, they are far from operating on the basis of automatic and indiscriminate collective guilt. What they do is to circumscribe a sphere of undisputed criminal activity conducted by a multitude of individuals who have, as a whole, willingly and knowingly taken part in it. On the other hand, as defined, they relate to a specific judicial act which, although denouncing the whole group as criminal, does not prejudice the issue of guilt and punishment of the individual members. This, as we will see, is only partly and in principle solved in a declaration of criminality, whereas the actual decision is left to the competent courts and fully allows for acquittals, as the case may be.

Legal Nature of the Declaration of Criminality. The declaration of criminality as provided in the Nuremberg Charter, is a specific judicial act. The indicted organisations, said the United States Chief Prosecutor, were " not on trial in the conventional sense of that term." They were " more nearly under investigation as they might have been before a Grand Jury in Anglo-American practice." The competence of the Tribunal was limited to trying " persons," which meant only " natural persons " and not entities or bodies. As a consequence the Tribunal was not " empowered to impose any sentence " upon the indicted groups and organisations. " The only issue," he added, concerned " the collective criminality of the organisation or group, and it was to be adjudicated by what amounts to a declaratory judgment." The declaration, said the British Prosecutor Sir David Maxwell-Fyfe, was in the nature of a " *res adjudicata* " or of a " judgment *in rem* " as distinct from a " judgment *in personam.*"

The adjudication is, thus, entirely of a " declaratory " nature, and leaves open all questions of individual guilt and punishment. These, as has been mentioned on several occasions, are left to the national or local courts competent to try individual members on the basis of the " declaratory judgment " of the Nuremberg Tribunal.

Effects of the Declaration of Criminality. The chief effect of a declaration of collective criminality is that the criminal nature of the group or organisation in question " is considered proved " and cannot be " questioned " (Art. 10 of the Charter). But, as will now be seen, this does not prejudice the question as to whether *all* the individual members are to be regarded as guilty and punished, and consequently does not result in automatic and obligatory convictions.

The prosecution made this point clear when advocating that, from the view point of the individual members, the consequence of the declaration was that it created a rebuttable *presumption* of guilt, and thus reversed the burden of proof. Members, when tried, were not allowed to disprove that their organisation or group was criminal at the time of their membership, but they were entitled to disprove the tests made against them individually as members of the body declared criminal. " Nothing precludes him (a member) from denying that his participation was voluntary," said Justice Jackson, " and proving that he acted under duress ; he may prove that he

was deceived or tricked into membership ; he may show that he had withdrawn, or he may prove that his name on the rolls is a case of mistaken identity. Actual fraud or trick " of which a member is a victim, " has never thought to be the victim's crime." As regards the member's knowledge of the criminal nature of the organisation, " he may not have known on the day he joined, but may have remained a member after learning the facts. And he is chargeable not only with what he knew, but with all which he was reasonably indicted."

It will be seen later that the Tribunal did not wish to answer the thesis of presumption of guilt either way, but that it decided that, apart from cases where a member was proved guilty of specific crimes, the tests of voluntary membership, and of actual or reasonably presumed knowledge represented the main issues upon which the subsequent courts were to decide each individual case of guilt.(1)

It thus appears that a declaration has a binding effect in the subsequent proceedings insofar as it finally decides upon the question of criminality of a given group or organisation. This is a novelty in international law in that the judgment of a Tribunal which has not tried individual members has effect in the proceedings of courts trying them.

(*c*) *General Ruling of the International Military Tribunal*

A general ruling was made with particular regard to the effects of a declaration of criminality upon the punishment of individual members by the competent courts. Referring to the provisions of the Charter, as well as to provisions of other laws enacted in anticipation of declarations by the Tribunal in this field, the Tribunal established in the first place that, under these rules, there was a " crime of membership " for individuals who belonged to organisations declared criminal. It said :

> " A member of an organisation which the Tribunal has declared to be criminal may be subsequently convicted of the *crime of membership* and be punished *for that crime* by death."(2)

(1) It is interesting to note that, during the proceedings one of the judges expressed opinions to the effect that a declaration of criminality could or even should be understood to result in obligatory and automatic convictions. Thus, the French judge, M. Donnedieu de Vabres, questioned the legal basis for introducing the tests submitted by Justice Jackson. According to these tests, emphasised the French judge, a member could be acquitted by proving that his membership was not voluntary or that he never knew of the criminal purpose of the organisation. However, he said, " I suppose that this Tribunal has a different conception. I suppose that it considers the condemnation of the individual who was a member of the criminal organisation, obligatory and automatic. Strictly speaking, the interpretation which has been advocated by Mr. Jackson is not written in any text. It does not appear in the Charter. Consequently, by virtue of what texts would the Tribunal in question (meaning the subsequent court) be obliged to conform to this interpretation ? " To this Justice Jackson replied that " there could be no such thing as automatic condemnations, because the authority given in the Chapter is to bring persons to trial for membership." " But," added Justice Jackson, " the points could be raised by the defendant that he had defences, such as duress, force against his person, or threats of force, and would have to be tried." See *Proceedings*, Part 8, H.M. Stationery Office, London, 1947, p. 103-104. Doubts such as those expressed by the French judge are an illustration of how the terms of the Charter could have, however unwittingly, been misinterpreted, had there not been a theory to explain their real purpose and meaning. It is also worth noting that, before making final decisions in its Judgment, all judges debated at length the theory of the United States Chief Prosecutor in the course of the proceedings and manifested their anxiety to clarify in every detail the issues involved. For full data, see *op. cit.*, p. 97-113.

(2) Italics are introduced.

However, added the Tribunal :

> " This is not to assume that international or military courts which will try these individuals will not exercise appropriate standards of justice. This is a far-reaching and novel procedure. Its application, unless properly safeguarded, may produce great injustice."

The Tribunal, thus, agreed with the basic thesis of the prosecution that the rules of the Charter and the concept of collective criminality involved in a declaration within the Tribunal's jurisdiction, should not be construed so as to result in an unqualified, indiscriminate and automatic collective penal responsibility of all members. The Tribunal emphasised this point with reference to its discretionary power in making declarations of criminality :

> " This discretion is a judicial one and does not permit arbitrary action, but should be exercised in accordance with well settled legal principles, one of the most important of which is that criminal guilt is personal, and that mass punishment should be avoided. If satisfied of the criminal guilt of any organisation or group, this Tribunal should not hesitate to declare it to be criminal because the theory of " group criminality " is new, or because it might be unjustly applied by some subsequent tribunals. On the other hand, the Tribunal should make such declaration of criminality so far as possible in a manner to insure that innocent persons will not be punished."

In this manner the Tribunal severed categorically the link of cause and effect which could have been made between the notion of a group held collectively criminal and that of the guilt of its individual members : even though the declaration is founded on the premise that the group was criminal as a whole, the guilt of all or any of its members remains on the traditional ground of " personal " guilt.

In order to determine the field of " personal criminal guilt " within the scope of an organisation declared criminal as a whole, the Tribunal delivered a definition of the " criminal organisation " and while doing so, it fully accepted the tests submitted by the prosecution :

> " A criminal organisation is analogous to a criminal conspiracy in that the essence of both is co-operation for criminal purposes. There must be a group bound together and organised for a common purpose. The group must be formed or used in connection with the commission of crimes denounced by the Charter. Since the declaration with respect to the organisations and groups will, as has been pointed out, fix the criminality of its members, that definition should exclude persons who had no knowledge of the criminal purposes or acts of the organisation and those who were drafted by the State for membership, unless they were personally implicated in the commission of acts declared criminal by Article 6 of the Charter as members of the organisation. Membership alone is not enough to come within the scope of these declarations."

Two distinct consequences appear from this statement—first the concept of and the tests regarding the criminality of a group or organisation, and secondly, the tests for establishing the guilt of individual members of the group. With regard to the first, the concept is reached when there is a " group bound and organised for a common purpose " and when such a

group " is formed or used in connection with the commission of crimes." When these two elements are fulfilled, a declaration that an organisation is criminal as a whole is justified. Since the Tribunal stressed that the organisation had to " be formed *or* used " in connection with the commission of criminal acts, this meant that it is not essential for the group to have actually committed crimes ; it is sufficient if it was set up for this purpose. With regard to the second, the tests are those of elimination, and two classes of members are excluded. First, those " who had no knowledge of the criminal purpose *or* acts of the organisation " and secondly, those " who were drafted by the State unless they were personally implicated in the commission " of criminal acts. The second proviso means that persons who were compulsorily drafted, even if they had knowledge of the criminal purpose of the organisation, are not guilty unless they personally were implicated in the commission of crimes.

The tests used to make the above elimination furnish at the same time those regarded by the Tribunal as representing the basis for convicting individual members on the part of the competent courts. As already stressed, under Article 10 of the Charter, a declaration delivered by the Tribunal makes possible the bringing to trial of individuals for the " crime of membership," in which case the criminal nature of the organisation cannot be challenged. The Tribunal did not specify who was to bear the onus of proof regarding tests of personal guilt, when a member is brought to trial, but the wording used by the Tribunal in respect of each of the organisations it declared criminal, tends to indicate that it wished the burden to lie on the prosecution. It would, therefore, appear that two alternative courses were made open to the competent courts. The first would be to hold the view, and this course was advocated by the United States Chief prosecutor and was eventually prescribed for the Denazification Courts in the United States zone of Germany, that the declaration made by the Nuremberg Tribunal creates a presumption of guilt against every member, and that consequently all the prosecution is required to do is to establish that the accused was a member of the organisation. In this case it was to be presumed, until proof to the contrary was established by the defendant, that he knew of the criminal purposes or acts of the organisation or that he was personally implicated in the commission of crimes, although he did not join the organisation on a voluntary basis. The second course is to hold the view that no presumption of individual guilt derives from the declaration of the Nuremberg Tribunal, and that consequently, the prosecution is called to prove not only that the accused was a member of the organisation declared criminal, but also that he knew the relevant facts and was personally implicated in the commission of crimes.

The Nuremberg Tribunal left untouched the question of how such evidence could be made good by either the prosecution or the defence. Competent courts were left full latitude in admitting circumstantial evidence, and the question of whether it is reasonable to believe that the accused had or had not knowledge of the criminal purpose or acts of his organisation can, and was in most cases, solved on the basis of the accused's rank and position, his duties and assignments while serving in the organisation and the like. With regard to the second test, that of the implication of persons who joined the organisation on a non-voluntary basis, the Tribunal's word " unless "

following the description of a member compulsorily enlisted, indicates that, whenever the accused has established his compulsory enlistment, the burden of proof that he has actually committed crimes lies on the prosecution.

It would thus appear that, by omitting to give an explicit answer to the issue of the burden of proof, the Nuremberg Tribunal in fact delegated this task to the competent courts and shunned interfering with their jurisdiction beyond the points mentioned in the Judgment. It also appears that a great responsibility has thus been put on the subsequent courts, and that differing jurisprudence may take place, as it in fact has.

(d) Recommendations regarding Punishment

The International Military Tribunal ended its general ruling by making a recommendation to the subsequent courts as to the punishment they were to impose for the crime of membership. It referred to Law No. 10 of the Allied Control Council for Germany and to a De-Nazification Law of 5th March, 1946, the relevant provisions of which will be found later. The recommendations read as follows :

> " Since declarations of criminality which the Tribunal makes will be used by other courts in the trial of persons on account of their membership in the organisations found to be criminal, the Tribunal feels it appropriate to make the following recommendations :
>
> 1. That so far as possible throughout the four zones of occupation in Germany the classifications, sanctions and penalties be standardised. Uniformity of treatment so far as practical should be a basic principle. This does not, of course, mean that discretion in sentencing should not be vested in the court ; but the discretion should be within fixed limits appropriate to the nature of the crime.
>
> 2. Law No. 10, to which reference has already been made, leaves punishment entirely in the discretion of the trial court even to the extent of inflicting the death penalty.
>
> The De-Nazification Law of 5th March, 1946, however, passed for Bavaria, Greater-Hesse and Wurttemberg-Baden, provides definite sentences for punishment in each type of offence. The Tribunal recommends that in no case should punishment imposed under Law No. 10 upon any members of an organisation or group declared by the Tribunal to be criminal exceed the punishment fixed by the De-Nazification Law. No person should be punished under both laws.
>
> 3. The Tribunal recommends to the Control Council that Law No. 10 be amended to prescribe limitations on the punishment which may be imposed for membership in a criminal group or organisation so that such punishment shall not exceed the punishment prescribed by the De-Nazification Law."

The De-Nazification Law of 5th March, 1946, referred to by the Tribunal, is in force in the United States Zone and its heaviest penalty does not exceed 10 years' imprisonment. The Nuremberg Tribunal, thus, made a strong point of the necessity of reducing the punishments provided by Law No. 10 in order to fit " the nature of the crime." The Tribunal found that the

" crime of membership " in itself(1) did in no case deserve a more severe punishment than that prescribed in the De-Nazification Law of March, 1946.

It will be noted that, in order to achieve such a result, the Tribunal found it necessary to recommend the amendment of Law No. 10. No such amendment took place apparently for the reason that it was not indispensable to achieve the effect sought. Art. II, para. 3, of Law No. 10 gives the competent courts full latitude to impose various punishments, including imprisonment for a term of years, at their discretion in each case and in respect of each class of crime. Room was, thus, left for implementing the recommendation of the International Military Tribunal without amending the law.

(iii) *The Law applied in the case of the Accused*

The law under which Greifelt and the other accused were tried for membership of criminal organisations, as well as for crimes against humanity and war crimes, was Law No. 10 of the Allied Control Council for Germany, of 20th December, 1945. The crime of membership is provided against in Art. II para. 1 of the Law together with crimes against peace, crimes against humanity and war crimes. The relevant passages read as follows :

> " Each of the following acts is recognised as a crime : . . . . .
>
> " (*d*) Membership in categories of a criminal group or organisation declared criminal by the International Military Tribunal."

The penalties generally prescribed for any crime under the Law include imprisonment with or without hard labour, which may be imposed for life, as well as death penalty. In the case of membership, however, the rules concerning punishment were supplemented by the above-cited recommendations of the International Military Tribunal. A study of the sentences passed by the United States Military Tribunal in Nuremberg for the crime of membership shows that these Tribunals have in fact followed the recommendation of the International Military Tribunal.

(iv) *The Guilt of the Accused for the crime of Membership*

The conviction of the accused for the crime of membership was made, according to Art. II para. 1 (*d*) of Law No. 10, on the grounds of the declaration made by the International Military Tribunal in regard to the criminal nature of the main organisation to which they belonged, that is the S.S. (Die. Schutzstaffeln der Nationalsocialistischen Deutschen Arbeiterpartie).

The International Military Tribunal's declaration concerning the S.S. read as follows :

> " The S.S. was utilised for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labour programme and the mistreatment and murder of prisoners of war. The defendant Kaltenbrunner was a member of the S.S. implicated in

(1) This distinction is important, for a defendent prosecuted for membership can at the same time be found guilty of either of the other specific crimes covered by Law No. 10, i.e. crimes against peace, war crimes or crimes against humanity. In such cases the punishments applicable are those from Art. II of Law No. 10 without restriction.

these activities. In dealing with the S.S. the Tribunal includes all persons who had been officially accepted as members of the S.S. including the members of the Allgemeine S.S. members of the Waffen S.S., members of the S.S. Totenkopf Verbaende and the members of any of the different police forces who were members of the S.S. The Tribunal does not include the so-called S.S. riding units. The Sicherheistdienst des Reichsfuhrers S.S. (commonly called the S.D.) is dealt with in the Tribunal's Judgment on the Gestapo and S.D.

"The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the S.S. as enumerated in the preceding paragraph who became or remained members of the organisation with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organisation in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes. The basis of this finding is the participation of the organisation in war crimes and crimes against humanity connected with the war ; this group declared criminal cannot include, therefore, persons who had ceased to belong to the organisation enumerated in the preceding paragraph prior to 1st September, 1939."

In the above declaration the International Military Tribunal included all persons who had been officially accepted as members of any of the branches of the S.S., except the so-called Riding units. The main branches were the Allgemeine S.S., the Waffen S.S., and the S.S. Totenkopf Verbaende. On the other hand, it excluded from the classes of members liable to prosecution for the crime of membership, those members who were drafted by the State in such a way as to give them no choice in the matter and who had committed no crimes personally, as well as those who had ceased to be members before 1st September, 1939.

In the trial under review all the defendants, with the exception of the one acquitted of all charges, held prominent ranks in the categories of the S.S. covered by the above declaration of the International Military Tribunal. Greifelt, Lorenz, Hofmann and Hildebrandt were Obergruppenfuehrers (Lt.-Generals) in the S.S., Creutz, Mayer-Hetling, Schwarzenberger and Ebner were Oberfuehrers (Senior Colonels), Huebner and Sollmann were Standartenfuehrers (Colonels), and Schwalm an Obersturmfuehrer (Lt.-Colonel). Finally, Brueckner and Tesch were Sturmbannfuehrers (Majors).

In its judgment the Tribunal made no specific reference to the branch of the S.S. to which the accused belonged, but it is likely that they all were members of the Allgemeine S.S.

As to the tests of individual guilt stressed by the International Military Tribunal with regard to members of the S.S., they consisted, as stressed in the Judgment, in ascertaining whether the accused "became or remained members of the organisation with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter (*i.e.*, crimes against peace, war crimes, and crimes against humanity), or whether they

were " personally implicated as members of the organisation in the commission of the crimes." On the face of the evidence concerning each of the accused, the Tribunal was satisfied that, being members of the S.S., they had the relevant knowledge and/or were personally implicated in the perpetration of crimes committed by the S.S.

(v) *Jurisprudence of other trials*

Many more trials of war criminals led to the conviction of accused persons for membership in criminal organisations. Several cases may be cited as typical of the jurisprudence which was created on these occasions. Five of these were tried by United States Military Tribunals at Nuremberg and three more by United States General Military Government Courts in Germany on the basis of declarations made by the International Military Tribunal and on the grounds of Law No. 10 of the Allied Control Council for Germany.

The cases are illustrative of how the general ruling and recommendations of the International Military Tribunal were implemented in connection with its declarations regarding the criminal nature of Nazi groups and organisations. Some of them show the way in which the issue of the burden of proof concerning the personal guilt of the defendants was solved, and how the tests of their guilt were applied.

(a) Trials by United States Military Tribunals at Nuremberg.

(1) *Trial of Karl Brandt et al. (Medical Case)*

In the first trial held by United States Military Tribunals at Nuremberg, 23 German doctors and scientists were prosecuted for carrying out criminal medical experiments.(1) The trial opened on 9th December, 1946, and was commonly known as the " Medical Case." The judgment was delivered on 19th and 20th August, 1947. The chief defendant, Karl Brandt, was personal physician to Hitler, Gruppenfuhrer in the S.S. and Major-General in the Waffen S.S., Reich Commissioner for Health and Sanitation, and member of the Reich Research Council. He was charged with the other defendants for medical experiments amounting to war crimes and crimes against humanity as defined in the Allied Control Council Law No. 10.

All experiments were conducted in concentration camps (Dachau, Sachsenhausen, Natzweiler, Ravensbruck, Buchenwald, etc.), and caused inhumane suffering, torture or death of many inmates. They consisted in high altitude experiments to investigate the limits of human endurance and existence at extremely high altitudes (up to 68,000 feet) ; freezing experiments to investigate means of treating persons severely chilled or frozen ; malaria experiments to investigate immunisation and treatment of malaria ; lost (mustard) gas experiments to investigate treatment caused by that gas ; sulfanilamide experiments to investigate the effectiveness of the drug ; bone, muscle and nerve regeneration and bone transplantation experiments ; seawater experiments to study methods of making seawater drinkable ; epidemic jaundice experiments to establish the cause of and discover inoculations against that disease ; sterilization experiments to develop a method best suited for sterilising millions of people ; spotted fever experiments to investigate the

(1) Case 1, tried by United States Military Tribunal No. 1. See Vol. IV of these Reports, pp. 91-3, and Vol. VII, pp. 49-53.

effectiveness of vaccines ; experiments with poison to investigate the effect of various poisons. In addition to this, several defendants were charged with activities involving murder, torture and ill-treatment not connected with medical experiments. In all cases inmates of concentration camps were used as " guinea-pigs " and were as a rule healthy subjects.

Karl Brandt and nine other accused were indicted for having committed such criminal acts as members of the S.S. and were, accordingly, also prosecuted as " guilty of membership in an organisation declared to be criminal by the International Military Tribunal " at Nuremberg.

When deciding upon this particular charge, the United States Military Tribunal referred to the general ruling of the International Military Tribunal and applied in each case the tests of individual guilt defined by the latter. On the face of the evidence submitted, Karl Brandt and eight other defendants were found guilty of membership on the ground that they had been in the S.S. until the end of the war and that, as such, they were actually and personally " implicated in the commission of war crimes and crimes against humanity." One defendant was found guilty of having " remained in the S.S. voluntarily throughout the war, with actual knowledge of the fact that that organisation was being used for the commission of acts declared criminal by Control Council Law No. 10."

(2) *Trial of Joseph Altstoetter et al.* (*Justice Case*)

In one of the most outstanding subsequent trials at Nuremberg, 16 German high officials of the Reich Ministry of Justice, judges and prosecutors of Nazi courts were prosecuted for the commission of criminal offences by means of legislative or judicial acts.(1) The trial opened on 17th February, 1947, and was commonly designated as the " Justice Case." The judgment was delivered on 3rd and 4th December, 1947.

The principal defendant Joseph Altstoetter, was Chief (Ministerialdirektor) of the Civil law and Procedure Division of the Reich Ministry of Justice, and Oberfuhrer in the S.S. Together with the other defendants he was charged with misusing legislative or judicial power in such a manner as actually to commit crimes against persons subjected to Nazi laws and/or courts of justice. The evidence submitted was to the effect that Nazi legal machinery was used as one of the means " for the terroristic functions in support of the Nazi régime ". Death sentence and other severe penalties were prescribed for acts which either did not represent criminal offences under standards of modern justice or did in no case warrant such heavy punishments. Sentences were pronounced by Nazi courts in pursuance of such criminal laws in a very large number of cases. The accused were indicted for being implicated in such acts, which, under the terms of the Control Council Law No. 10, amounted to war crimes or crimes against humanity.

Seven defendants, including Altstoetter, were accused of having committed such crimes as members of organisations declared criminal by the International Military Tribunal.(2) The organisations involved were the S.S.,

(1) Case No. 3, tried by United States Military Tribunal No. 3. See Vol. VI, pp. 1-110.
(2) *Ibid*, pp. 4-5, 65-72 and 77.

S.D. and Leadership Corps, of the Nazi Party. Some of the defendants were members of two organisations simultaneously. They were accordingly charged separately with the crime of membership in such organisations. As in the previous case the Tribunal applied the tests of criminality defined by the International Military Tribunal and found the accused individuals guilty of membership on different grounds. Alstoetter was found guilty as a member of the S.S. falling within the groups declared criminal by the International Military Tribunal, on the grounds that he had knowledge of the criminal purposes and acts of the S.S. and remained voluntarily in the organisation. The test of knowledge was likewise positively established against two other defendants. In one case the Tribunal was satisfied by the evidence that the accused actually knew of the execution of political prisoners and that he personally took part in the misdeeds. It also arrived at such conclusion on the basis of circumstantial evidence deriving from the accused's official position and duties. " No man who had his intimate contacts with the Reich Security Main Office, the S.S., the S.D., and the Gestapo could possibly have been in ignorance of the general character of those organisations." In the second case the evidence regarding the *mens rea* of the accused was entirely of a circumstantial nature. The crimes, said, the Tribunal, " were of such wide scope and so intimately connected with the activities of the Gauleitung (the accused's organisation) that it would be impossible for a man of the defendant's intelligence not to have known of the commission of these crimes, at least in part if not entirely." It is interesting to note that the chief defendant, Altstoetter, was found guilty only on the count of membership and freed from other charges. He was sentenced to 5 years' imprisonment.

Two defendants were acquitted. In one case the defendant was charged as a member of the Leadership Corps of the Nazi Party, and the Tribunal established that his group did not in fact belong to the Leadership Corps, nor to any other organisation declared criminal. In the second case the accused was charged as a member of the Leadership Corps Staff and a " sponsoring " member of the S.S. The Tribunal ruled that neither a Gaustellenleiter nor a " sponsoring " member of the S.S. could be regarded as a member of an organisation declared criminal by the International Military Tribunal.

(3) *Trial of Oswald Pohl et al*

One of the most interesting trials in this field is the so-called " Pohl Case," which opened on 10th March and closed on 3rd November, 1947.(1) The Tribunal dealt with 18 defendants, all of whom but one were members of the S.S. They were top ranking officials in the " S.S. Economic and Administrative Main Office," known as " W.V.H.A." (Wirtschafts-und Verwaltungshauptampt), which was one of the twelve main departments of the S.S. and to which was added the main office of the Inspector of Concentration Camps. The principal accused, Pohl, was Chief of the W.V.H.A. and as such, the administrative head of the entire S.S. organisation. Himmler was his only superior. The other accused were heads of the various branches of the W.V.H.A.

(1) Case 4, tried by United States Military Tribunal No. 2. See Vol. VII, pp. 49 and 63.

The S.S. Economic and Administrative Main Office was in charge of running concentration camps and a large number of industrial, manufacturing and service enterprises in Germany and occupied countries. It was responsible for all financial matters of the S.S., for the supply of food, clothing, housing, sanitation and medical care of inmates and S.S. personnel of concentration camps ; for the construction and maintenance of houses, buildings and structures of the S.S., the German police and of the concentration and prisoners of war camps ; and for the order, discipline and regulation of the lives of the concentration camps inmates. In addition it was charged with the supply of slave labour of the concentration camp inmates to public and private employers throughout Germany and the occupied countries, as well as to enterprises under its own management.

On account of such relationship with concentration camps and slave labour, all the accused were charged with taking part in the commission of " atrocities and offences against persons and property, including plunder of public and private property, murder, extermination, enslavement, deportation, unlawful imprisonment, torture, persecutions on political, racial and religious grounds, ill-treatment of, and other inhumane and unlawful acts against thousands of persons, including German civilians, nationals of other countries, and prisoners of war." The accused were thus tried as chief instruments of the criminal policy conducted by the heads of the Nazi Party and State against the millions who were ill-treated or perished in concentration camps or as slave labour.

In addition to the above offences, all the accused except one were charged under a separate count for the crime of membership in an organisation declared criminal by the International Military Tribunal, and were all indicted as falling within the categories covered by the Tribunals' declaration.

When summing up the various counts of the indictment, including that of membership, the United States Military Tribunal made a general ruling regarding the evidence and discarded entirely the principle of the presumption of guilt in the following terms :

> " Under the American concept of liberty, and under the Anglo-Saxon system of jurisprudence, every defendant in a criminal case is presumed to be innocent until the prosecution by credible and competent proof has shown his guilt to the exclusion of every reasonable doubt. This presumption of innocence follows him throughout the trial until such degree of proof has been adduced. Beyond a reasonable doubt, does not mean beyond a vain, imaginary or fanciful doubt, but means that the defendant's guilt must be fully proved to a moral certainty, before he is condemned."

It will be seen that the Tribunal applied this ruling to all individual cases of membership and lay the burden of proof concerning tests of personal guilt on the prosecution. This illustrates the fact previously mentioned that the International Military Tribunal did not decide the question of the burden of proof, and thus made possible the elaboration of a differing jurisprudence in this respect. The striking feature in this trial is that the above ruling was applied by an American court, notwithstanding the fact that rules issued by the American authorities for other courts are founded on the principle that a declaration of criminality reverses the onus of proof and frees the

prosecution from submitting evidence in respect of the personal guilt of the members.(1) In view of the fact that no rules to this effect were issued with particular regard to the United States Military Tribunals at Nuremberg, and that the International Military Tribunal had left the field clear, the above ruling was within the powers of the United States Tribunal and the legal basis of its jurisprudence cannot be challenged.

The ruling was applied with particular clearness in respect of two defendants whom the Tribunal acquitted from all charges.

In one case the accused, Rudolf Scheide, was Chief of a department of the W.V.H.A. as technical expert in the field of motor transport, and was in charge of all the transport service of the W.V.H.A. The prosecution contended that, in connection with his office and the large field of tasks carried out by him with the various branches of the W.V.H.A., the accused " gained knowledge of how the concentration camps were operated, how the prisoners were treated, who they were, and what happened to them." It also contended that he " knew that the concentration camps were engaged in the slave labour programme, and that he furnished transportation in this programme with knowledge of its use." And finally, that he " knew of the mass extermination programme carried out by the concentration camps " and provided the department concerned in this programme " with transportation, spare parts, tyres, gasoline, and other necessary commodities for carrying out this programme." The accused denied knowledge of all these crimes and the Tribunal came to the following conclusion :

> " After weighing all the evidence in the case, and bearing in mind the presumption of innocence of the defendant, *and the burden of proof on the part of the prosecution*, the Tribunal must agree with the contentions of the defendant."(2)

The Tribunal then found the accused not guilty on the following grounds :

> " The defendant admits membership in the S.S., an organisation declared criminal by the Judgment of the International Military Tribunal, *but the prosecution has offered no evidence* that the defendant had knowledge of the criminal activities of the S.S., or that he remained in the said organisation after September, 1939, with such knowledge or that he engaged in criminal activities while a member of such organisation."(2)

According to the ruling of the International Military Tribunal, it will be remembered that proof in respect of the last test (personal commission of crimes) would appear always to lie on the prosecution, whereas nothing stands in the way of subjecting the test of knowledge to a reversal of the burden of proof as advocated by the United States Chief Prosecutor and as followed up in a number of United States rules.

In the same case the accused, Leo Volk, was head of a legal department of the W.V.H.A. As with Scheide, the prosecution contended that he had knowledge of the criminal purposes and acts of the W.V.H.A. on account of his office and duties. The accused's defence was that he had no such knowledge, but merely prepared notarial documents, carried on law suits and generally gave legal advice. The Tribunal was satisfied that the accused

(1) See *History of the United Nations War Crimes Commission and the Development of the Laws of War*, pp. 322, and 331-332.

(2) Italics introduced.

was a " vital figure " in his department and refuted the defence thesis that, in order to convict him, proof should be submitted that, if he knew of the criminal purposes or acts of his organisation, he must have had the power to prevent crimes from being committed. The Tribunal declared :

> " It is enough if the accused took a *consenting part* in the commission of a crime against humanity. If he was part of an organisation actively engaged in crimes against humanity, was aware of those crimes and yet voluntarily remained a part of the organisation, lending his own professional efforts to the continuance and furtherance of those crimes, he is responsible under the law."

However, continued the Tribunal, the defence contends that the accused " was not aware of any crimes and *it is this which the prosecution must establish* before it can ask for a conviction,"(1) meaning that the accused had knowledge of the crimes.

The Tribunal found that no such evidence had been submitted, and that the accused did not voluntarily join the organisation but was drafted from a private firm he personally did not want to leave for the W.V.H.A. It also established that, in the W.V.H.A. he had a special status in that he was employed under special contract. In view of these facts the Tribunal decided that the accused's guilt for membership had not been established " beyond reasonable doubt " and while convicting him on other counts, it acquitted him from this particular charge.

Two more defendants were acquitted from the charge of membership. One of them was head of the Office of Audits in the W.V.H.A. from 1942 until the end of the war. Here again the Tribunal established lack of evidence on the part of the prosecution regarding the relevant tests and concluded in the following terms :

> " Perhaps in the case of a person who had power or authority to either start or stop a criminal act, knowledge of the fact coupled with silence could be interpreted as consent. But Vogt was not such a person. His office in W.V.H.A. carried no such authority, even by the most strained implication. He did not furnish men, money, materials or victims for the concentration camps. He had no part in determining what the inmates should eat or wear, or how hard they *did* work or how they *were* treated. The most that can be said is that he knew that there were concentration camps and that there were inmates. His work cannot be considered any more criminal than that of the bookkeeper who made up the reports which he audited, the typist who transcribed the audit report or the mail clerk who forwarded the audit to the Supreme Auditing Court."

As a consequence the accused was acquitted on all counts. Leo Volk was acquitted for not belonging to any of the classes or categories of S.S. members included in the declaration of the International Military Tribunal.

In other instances the Tribunal applied extensively circumstantial evidence to admit proof of guilty knowledge as charged by the prosecution.

Defendant August Frank was Chief Supply Officer of the Waffen-S.S. and Death Head Units under the defendant Pohl, and became Pohl's Chief

(1) Italics in the last quotation introduced.

Deputy of the W.V.H.A. In view of his position and the field of his competence and duties the Tribunal came to the following conclusions :

> " . . . . anyone who worked, as Frank did, for eight years in the higher councils of that agency cannot successfully claim that he was separated from its political activities and purposes."

From that the Tribunal further concluded that he " could not have been ignorant " or that he " must have known " of the purposes as well as of a series of criminal acts described by the Tribunal. He was found guilty of " participating and taking a consenting part " in the " slave labour programme . . . and in the looting of property of Jewish civilians for the eastern occupied territories." In this connection he was also convicted for the crime of membership.

Another defendant, Erwin Tschentscher, was chief of a department of W.V.H.A. dealing with supplies of food for the Waffen-S.S. and the police in Germany. He contended in defence that his only link with concentration camps was to furnish food for the guards, and declined any knowledge of concentration camp crimes and slave labour practices. On the face of his position and duties, as well as of the evidence that he paid visits to several concentration camps, the Tribunal expressed its findings in the following terms :

> " The Tribunal concludes that the defendant Tschentscher was not a mere employee of the W.V.H.A., but held a responsible and authoritative position in this organisation. He was Chief of Amt-B-I, and in this position had large tasks in the procurement and allocation of food. Conceding that he was not directly responsible for furnishing food to the inmates of concentration camps, he was responsible for furnishing the food to those charged with guarding these unfortunate people.
>
> . . . . .
>
> " The Tribunal is fully convinced that he knew of the desperate condition of the inmates, under what conditions they were forced to work, the insufficiency of their food and clothing, the malnutrition and exhaustion that ensued, and that thousands of deaths resulted from such treatment. His many visits to the various concentration camps gave him a full insight into these matters.
>
> " The Tribunal finds without hesitation that Tschentscher was thoroughly familiar with the slave labor program in the concentration camps, and took an important part in promoting and administering it."

For these reasons the accused was found guilty both of actual participation in war crimes and crimes against humanity and of the crime of membership.

In all other cases the Tribunal had either clear evidence of the actual participation of the accused in specific criminal acts, such as in the case of Pohl himself, or else sufficient evidence to draw conclusions as to their guilty knowledge, and on this basis pronounced sentences of guilt for the crime of membership.

(4) *Trial of Friedrich Flick et al*

The trial of Friedrich Flick and five other defendants opened on 20th April and closed on 22nd December, 1947.[1] It was one of several trials

[1] Case 5, tried by United States Military Tribunal No. 4. See Vol. IX of these Reports, pp. 1-59.

commonly designated as " industrial cases," for the defendants were not officials of the Nazi State, but private citizens engaged as business men in German heavy industry. Flick owned a steel corporation controlling or affiliated with iron and coal mining companies. The other defendants were his assistants or associates. They were charged *inter alia* with taking part in, and being members of, groups or organisations connected : *Count I :* with " enslavement and deportation to slave labour " of concentration camp inmates and other civilians, as well as with the " use of prisoners of war " in work prohibited by international law (armament production, etc.), *Count II :* with " plunder of public and private property, spoliation, and other offences against property " in occupied territories ; *Count III :* with " persecutions on racial, religious and political grounds " ; *Count IV :* with " murders, brutalities, cruelties, tortures, atrocities and other inhumane acts committed principally by the S.S."

Although in the majority of counts the defendants were described as members of organisations " connected " with criminal activities, only one accused, Steinbrinck, was member of an organisation declared criminal by the International Military Tribunal (the S.S.) ; he was consequently the only defendant specifically indicted for the crime of membership. In addition, under Count IV, both he and the chief defendant, Flick, were accused of offences closely connected with membership of the S.S. They were charged with having contributed, as members of a private group called the " Keppler Circle " or " Friends of Himmler," large sums to the financing of the S.S. " with knowledge of its criminal activities," and to have thereby been accomplices in war crimes and crimes against humanity perpetrated by the S.S. It is important to note that the charge was not, and could not be, that they were guilty of membership in the " Keppler Circle," for this circle was not included in the organisations declared criminal by the International Military Tribunal. Neither was " knowledge " of the S.S. criminal activities mentioned in this instance as a test for the crime of membership, but only as a basis for charging the two defendants as accomplices or accessories to the crimes committed by the S.S. This part of the indictment proved, however, to be relevant for deciding the case of Steinbrinck, as it contained facts furnishing evidence regarding his guilty knowledge as a member of the S.S.

As in the " Pohl Case," the United States Military Tribunal which tried Flick, Steinbrinck and others rejected the thesis of presumption of guilt and took the view that the burden of proof concerning the tests of criminality for membership lay on the prosecution. So, in the case of Steinbrinck it declared the following :

> " Relying upon the International Military Tribunal's findings . . . the prosecution took the position that it devolved upon Steinbrinck to show that he remained a member without knowledge of such criminal activities. As we have stated in the beginning the burden was all the time upon the prosecution."

The Tribunal decided the case on the basis of this rule.

In assessing the tests relevant for determining Steinbrinck's individual guilt, the Tribunal declared that there was no evidence showing that he was personally implicated in the commission of crimes perpetrated by the S.S.

and that no contention had been made to the effect that he was drafted on a compulsory basis. It therefore determined that his personal guilt was to be established solely on the basis of the test of knowledge of the criminal nature of the S.S.

As mentioned above, the Tribunal's findings on this test were made on the basis of the accused's activities as member of the " Keppler Circle." This circle was composed of about 30-40 bankers, industrialists and S.S. leaders, including the S.S. Reichsfuehrer Himmler himself. Steinbrinck was a member from the beginning, which dated as far back as 1932. The circle was originally formed by Hitler's economic adviser Keppler, who gave it his name, with a view to inducing industrialists and other top business men to support the Nazi programme and regime. The circle had regular informal meetings and its members made regular donations upon Himmler's request, amounting to a total of 1 million Reichsmarks annually. Himmler's explanation for such requests was that he needed funds for " his cultural hobbies and for emergencies for which he had no appropriations." Steinbrinck contributed very large sums of money every year. The Tribunal was satisfied that the meetings of the group did not have " the sinister purposes ascribed to them by the prosecution," and found " nothing criminal or immoral in the defendant's attendance at these meetings." It was also satisfied that, in the beginning and particularly before the war, " the criminal character of the S.S. was not generally known." It came, however, to the conclusion that " later " it " must have been known " ; " that during the war and particularly after the beginning of the Russian campaign " there was not " much cultural activity in Germany " ; and that consequently members of the group could not " reasonably believe " Himmler was spending their money for other purposes than to maintain the S.S. The Tribunal found " no doubt " that " some of this money " went to the S.S., and declared " immaterial whether it was spent on salaries or for lethal gas." From this it concluded that Steinbrinck was guilty of the crime of membership. The Tribunal's findings in this respect were, thus, entirely based on circumstantial evidence and were, from a practical point of view, founded on premises equivalent to that of a presumption of guilt.

The trial ended in the conviction of Flick, Steinbrinck and one more defendant, whereas the other three were acquitted. In passing sentence upon Flick and Steinbrinck the Tribunal admitted circumstances in mitigation of the punishments, and pronounced sentences not exceeding 7 years' imprisonment.

(5) *I.G. Farben Trial*

In the trial of the leading personnel of " I.G. Farben Industrie "(1) the world-wide German chemical concern, three of the twenty-three accused were charged with the crime of membership.

The trial opened on 14th August, 1947, and closed on 29th July, 1948. The three accused involved on the count of membership were Christian Schneider, Heinrich Buetefisch, and Erich von der Heyde.

Schneider, a chemist, held the post of member of the Board of Directors (Vorstand) and of the Central Committee of I.G. Farben. He also held

(1) See Vol. X, pp. 1-68.

other important posts, including that of head of Farben's Central Personnel Department. He was a member of the Nazi Party and a supporting or " sponsoring " member of the S.S. He was charged with membership on account of this latter link with the S.S.

Buetefisch, a Doctor of Engineering (Physical-Chemical), was also a member of Farben's Vorstand, and in addition to other posts, was chairman or member of control groups of many Farben concerns in the fields of chemicals, explosives, mining, synthetics, etc. He was a member of the Nazi Party and of the " Keppler Circle," referred to above. He was also a Lieutenant-Colonel of the S.S., and was charged with membership of the S.S.

Von der Heyde, a Doctor in Agriculture, served Farben's Economic Policy Department, and Counter-Intelligence Branch. He was a member of the Nazi Party and of the Reitersturm (Riding Unit), S.S. The prosecution contended that the accused was an active member of the Allgemeine (General) S.S.

None of the above three accused was found guilty of the charge and they were consequently all acquitted on the count of membership.

In the instance of Schneider the Tribunal found that the accused was only a " sponsoring " member of the S.S. and that as such his only contact with the S.S. " arose out of the payment of dues." The Tribunal referred to the judgment delivered in the trial of Altstoetter and agreed with the latter's finding that a sponsoring membership was not included in the declaration of the International Military Tribunal concerning the S.S.

In the instance of Buetefisch the Tribunal dealt with the accused's position as a member of the Himmler Circle of Friends, and established that at about the same time the accused had become an honorary member of the S.S. The findings were in part similar to those of the trial of Flick. The Himmler Circle of Friends, said the Tribunal, " played no part in formulating any of the policies of the Third Reich." It was also found that no evidence had been produced to the effect that the accused " had knowledge of the criminal purposes or acts of the S.S. at the time he became or during the period he remained a member." Finally the Tribunal established that the accused could not be regarded as a member of the S.S. within the terms of the International Military Tribunal's declaration. After stressing that the defendant had only been an honorary member of the S.S. the Tribunal, however, did not find this to be sufficient and decisive in itself :

> " We do not attach any special significance to the fact that the defendant was classified as an honorary member, but we are of the opinion that the defendant's status in the organisation must be determined by a consideration of his actual relationship to it and its relationship to him."

It was on the basis of such " actual relationship " that the Tribunal made its decision. It established that the accused had " consistently refused to procure a uniform in the face of positive demands that he do so " ; and that in addition he made " other significant reservations " which he " imposed and consistently maintained when and after he accepted honorary membership."

In the instance of von der Heyde the Tribunal's findings included the following statement :

> " Taking into account that the only definitely established affiliation of the defendant was with the non-culpable Riding Unit of the S.S., and that the evidence tending to show that he subsequently became a member of the General S.S. arises wholly out of the innocuous incidents connected with his efforts to obtain a marriage license, we must conclude that the guilt of the defendant von der Heyde . . . has not been satisfactorily established."

(b) Trials by United States General Military Government Courts

Several trials conducted by United States General Military Government Courts in Germany concern cases involving, in addition to the S.S., other Nazi organisations declared criminal by the International Military Tribunal. They are the Leadership Corps of the Nazi Party, and the Gestapo (State Secret Policy) and S.D. (Sicherheitsdienst—Security Police).

In the conclusion of the declaration concerning the Leadership Corps the International Military Tribunal stated the following :

> " The Leadership Corps was used for purposes which were criminal under the Charter and involved the Germanization of incorporated territory, the persecution of the Jews, the administration of the slave labour programme, and the mistreatment of prisoners of war. The defendants Bormann and Sauckel who were members of this organisation, were among those who used it for these purposes. The Gauleiters, the Kreisleiters, and the Ortsgruppenleiters participated, to one degree or another, in these criminal programmes. The Reichsleitung as the staff organisation of the Party is also responsible for these criminal programmes as well as the heads of the various staff organisations of the Gauleiters and Kreisleiters. The decision of the Tribunal on these staff organisations includes only the Amtsleiters who were heads of offices on the staffs of the Reichsleitung, Gauleitung and Kreisleitung. With respect to other staff officers and party organisations attached to the Leadership Corps other than the Amtsleiters referred to above, the Tribunal will follow the suggestion of the Prosecution in excluding them from the declaration.
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> " The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Leadership Corps holding the positions enumerated in the preceding paragraph who became or remained members of the organisation with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organisation in the commission of such crimes. The basis of this finding is the participation of the organisation in war crimes and crimes against humanity connected with the war ; the group declared criminal cannot include, therefore, persons who had ceased to hold the positions enumerated in the preceding paragraph prior to 1st September, 1939."

The conclusion of the declaration made in respect of the Gestapo and S.D. read as follows :

> " The Gestapo and S.D. were used for purposes which were criminal under the Charter involving the persecution and extermination of the

Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labour programme and the mistreatment and murder of prisoners of war. The defendant Kaltenbrunner, who was a member of this organisation, was among those who used it for these purposes. In dealing with the Gestapo the Tribunal includes all executive and administrative officials of Amt IV of the RSHA or concerned with Gestapo administration in other departments of the RSHA and all local Gestapo officials serving both inside and outside of Germany, including the members of the Frontier Police, but not including the members of the Border and Customs Protection or the Secret Field Police, except such members as have been specified above. At the suggestion of the Prosecution the Tribunal does not include persons employed by the Gestapo for purely clerical, stenographic, janitorial or similar unofficial routine tasks. In dealing with the S.D. the Tribunal includes Amts III, VI and VII of the RSHA and all other members of the S.D. including all local representatives and agents, honorary or otherwise, whether they were technically members of the S.S. or not.(1)

" The tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and S.D. holding the positions enumerated in the preceding paragraph who became or remained members of the organisation with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organisation in the commission of such crimes. The basis for this finding is the participation of the organisation in war crimes and crimes against humanity connected with the war ; this group declared criminal cannot include, therefore, persons who had ceased to hold the positions enumerated in the preceding paragraph prior to 1st September 1939."

In the following three trials accused persons were convicted for membership of one or more of the above organisations. All trials were held by the United States General Military Government Court at Dachau.

In the trial of Hans Seibold and two others, held on 5th-7th March, 1947, the defendants were implicated in the killing of a member of the United States Army who, as was stated in the judgment, " was a surrendered and unarmed prisoner of war in the custody of the then German Reich." Two of the accused were members of the Leadership Corps of the Nazi Party, one being a Kreisleiter and the other an Ortsgruppenleiter. The third was a member of the Allgemeine S.S. Their position and ranks were within the classes of members liable to punishment under the declarations of the International Military Tribunal.

They were found guilty of a war crime and of the crime of membership in organisations declared criminal by the International Military Tribunal. One was sentenced to death and the other two to life imprisonment each.

In a similar trial held on 13th February, 1947, the accused, Erwin Schienkiewitz, was tried for killing two unknown members of the United States Army under circumstances identical with those of the previous case.

(1) The RSHA or Reichssicherheitshauptamt was the top co-ordinating body of the Gestapo. The " Amts " referred to were its various departments.

The accused was a member of the S.S., and was convicted to death for a war crime and the crime of membership in the S.S.

Finally, in a trial held from 10th January to 21st March, 1947, there were 23 accused with one Jurgen Stroop at their head. They were implicated in the ill-treatment, including death, beatings, and torture, of " members of armed forces then at war with the then German Reich, who were surrendered and unarmed prisoners of war in the custody of the then Germany Reich." Some were members of the S.S., and some others of the Leadership Corps, or of the Gestapo and the S.D. Thirteen were found guilty of both war crimes and the crime of membership, and were sentenced to punishments ranging from the death penalty to various terms of imprisonment.

3. RELEVANCE OF SOME DEFENCE PLEAS

(i) *The Plea concerning " Annexed Territories "*

One of the pleas of the defence was to the effect that the accused bore no penal responsibility for acts committed in territories which were annexed and incorporated in the German Reich. Such was, for instance, the case with Polish territories outside the Government General, as well as with Alsace and Lorraine and parts of Yugoslav Slovenia (Southern Carinthia).

The argument was used by several defence counsel, and the following quotation from the plea of Meyer-Hetling's counsel may be cited as a striking illustration :

> " . . . the Polish State was completely subjugated and dissolved following the events of 1st September, 1939. The war between Germany and Poland, which started on 1st September, 1939, led to the complete military collapse of Poland within a few weeks, as I have already explained. The Polish Army was dispersed. Its greater part was captured by German troops. . . . The Polish Government resigned. A new government was only gradually formed abroad. On 17th September, 1939, Soviet forces marched into Poland, occupied the parts of Poland not yet in German hands and took the remainder of the Polish army still there prisoner. Thus the entire Polish territory was occupied and its army completely annihilated. The material prerequisites for a declaration of annexation had thus been created. . . . According to recognised practice in international law, the material prerequisites for subjugation or conquest of a state do not include the dissolution of the government and the abdication of the sovereign, after all the territorial and sovereign influence has been eliminated. If the government and sovereign flee to other countries, their activity abroad in connection with the admissibility of the annexation is of no importance under international law, even if they should still be recognised diplomatically by individual states. . . . International law, true to its tendency to make established facts legally valid, sees in the actual cessation of state power during the war the authority to eliminate the legal status of a state as well. On the other hand, the possibility of restoring the extinct state power by future events such as the victory of an ally is not taken into consideration at all.
>
> " It must be deduced therefrom that the 5th partition of Poland—the events of September, 1939, may be seen in that light—was an annexation in accordance with international law."

As the prosecution stressed, " the burden of this argument was that since these territories were absorbed by the Reich, the laws and customs of war no longer applied and hence no war crimes could have been committed."

This plea was rejected by the Tribunal on the ground that a unilateral decision taken by a State to incorporate parts of foreign territories does not in itself give title for recognition of the annexation by other States. The Tribunal's finding in the matter was couched in the following terms :

> " It has been urged and argued at length that certain territories, such as the incorporated Eastern territories of Poland and parts of Luxembourg, Alsace and Lorraine, were incorporated into the Reich and thereby became a part of Germany during the war. Hence it is urged, the laws and customs of war are inapplicable to these territories.
>
> " Any purported annexation of territories of a foreign nation, occurring during the time of war and while opposing armies were still in the field, we held to be invalid and ineffective. Such territory never became a part of the Reich but merely remained under German military control by virtue of belligerent occupancy. Moreover, if it could be said that the attempted incorporation of territories into the Reich had a legal basis, it would avail the defendants nothing, for actions similar to those occurring in the areas attempted to be annexed also occurred in areas which Germany never professed to have incorporated into the Reich."

The above finding was in fact a confirmation of the stand taken previously by the International Military Tribunal in the case of the Nazi major war criminals, in a passage already quoted in an earlier Volume in this series.([1])

The same view was taken by another U.S. Military Tribunal at Nuremberg, in the case against Josef Altstoetter and 15 others.([2])

From these pronouncements it clearly appears that the status of a territory under enemy occupation remains unaltered and maintains its true nature of occupied land whatever the occupying Power does with the aim of giving different legal status. From this it follows that, given the circumstances of belligerent occupation, an occupying Power cannot claim the right to impose its domestic laws and thereby make legal acts which are otherwise forbidden by international law.

(ii) *The Plea of Superior Orders.*

In this case, as in many others, the Tribunal confirmed the rule that to commit acts, which are criminal, upon superior orders is not in itself a basis for exculpating the perpetrator, but may be taken, at the court's discretion, as a mitigating circumstance.

In applying this rule in the case of the defendants, most of whom had pleaded not guilty on the grounds of orders issued by their superiors, the Tribunal implemented Art. II 4 (*b*) of Law No. 10, which reads :

> " The fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation."

([1]) See Vol. II, p. 151.

([2]) See Vol. VI, pp. 32, 52, 62 and 91-3.

The finding of the Tribunal with regard to the relevance of the above rule in the case of the accused was couched in the following terms :

> " Another defense urged is that, in performing certain functions, the defendants were acting under superior orders. By Control Council Law No. 10, it is expressly provided that superior orders shall not free a defendant from responsibility for crime but this fact may be considered in mitigation of punishment. We have, in passing judgment on all the defendants, given due consideration to this defence as it might affect the punishment of the individual defendants. It is our view in this respect, that justice demands a fair consideration of the fact that each and all defendants occupied a subordinate position, being answerable to Himmler, and several of the defendants were even subordinate to other defendants at bar."

CASE No. 74

TRIAL OF GAULEITER ARTUR GREISER

SUPREME NATIONAL TRIBUNAL OF POLAND
21ST JUNE—7TH JULY, 1946

Criminal Organisations—Conspiracy and Aggressive War—Annexation of Occupied Territory—Genocide—The Defence of Superior Orders.

A. OUTLINE OF THE PROCEEDINGS

1. THE INDICTMENT

Artur Greiser, formerly a citizen of Danzig, was charged with the following offences :

(A) That, between 1930 and May, 1945, within the territories of the Third Reich, of the Free City of Danzig, and of Poland, as one of the leaders of the German National Socialist Workers' Party (NSDAP) he took part in the activities of a criminal organisation, which that party was, its purpose being through violence, waging of aggressive wars and the commission of crimes, to establish in Europe and in particular in the states bordering on Germany, among them that of Poland, the national-socialist régime and to incorporate into Germany foreign territories, in particular some of the territories of which the Polish State was composed by virtue of the Treaty of Versailles.

(B) That, on behalf of the said Nazi Party (NSDAP), he was in charge of its branch acting under the same name in the territory of the Free City of Danzig, and that in this capacity he, between 1933 and 1st September, 1939, conspired with the chief government organs of the German Reich with a view to :

(1) Causing warlike activities whose purpose was to separate part of the territories of the Polish State, and subsequently to deprive the remaining territories of that State of their independence, which was accomplished by the aggression against Poland begun on 1st September, 1939, and subsequently by means of the military occupation of the whole country carried out in violation of the principles of the law of nations ;

(2) Arbitrarily depriving the Polish State of the rights to which it was entitled in the territory of the Free City of Danzig by virtue of Article 104 of the Treaty of Versailles and of the Polish-Danzig Agreement concluded in Paris on 9th November, 1920, as well as of the Convention subsequently concluded on the basis of the aforesaid treaty and agreement, and of the legally binding decisions of international bodies ; and also with the purpose of limiting the rights accorded by virtue of those same treaties and agreements to all persons of Polish

origin, or speaking the Polish language, and to all Polish citizens in the territory of the Free City of Danzig, this object having been achieved by the appointment by the Danzig Senate on 23rd August, 1939, of Albert Forster, a subordinate to the *Führer* of the Third Reich and Gauleiter of the National-Socialist Party in Danzig, to the post of *Stadtoberhaupt* (Governor) of the Free City of Danzig, and who by a law of 1st September, 1939, set aside the constitution of the Free City of Danzig, and arbitrarily incorporated it to the German Reich.

(c) That, during the Second World War, begun as a result of German aggression, in the period from 12th September, 1939, to mid-January, 1945, that is to the time of the withdrawal of the German occupying forces from the territory of the so-called " Wartheland," first as head of the office of the civil administration attached to the German military headquarters in Poznan, and subsequently, from 26th October, 1939, as *Reichstatthalter* (Governor) and simultaneously *Gauleiter* of the N.S.D.A.P. for the Province of Poznan (Posen) and part of those of Lodz and Pomorze (Pomerania) which were incorporated into the Reich by the Decree of the *Führer* of 8th October, 1939, under the name of " Reichsgau Posen " which was later changed to " Wartheland," exceeding the rights accorded to the occupying authority by international law, and in particular violating Articles, 43, 46, 47, 50, 52, 55 and 56 of The Hague Regulations, which were binding upon Poland and upon the German Reich, and contravening the principles of the law of nations and the postulates of humanity and the conscience of nations, both on his own initiative and in carrying out the unlawful instructions of the civil and military authorities of the German Reich, he acted to the detriment of the Polish State and of its citizens, by inciting to, and assisting in the commission of, and by committing personally the following offences :

(1) Individual and mass murders of civilians and of prisoners of war ;

(2) Acts of ill-treatment, persecution and bodily harm against such persons, and other acts causing their ill-health ;

(3) Systematic destruction of Polish culture, robbery of Polish cultural treasures and germanization of the Polish country and population, and illegal seizure of public property ;

(4) Systematic and illegal deprivation of the Polish population of its private property.

In particular the accused Artur Greiser during the period and in the territories mentioned above :

(i) Participated in insulting and deriding the Polish nation by proclaiming its cultural and social inferiority ;

(ii) Participated by various means, from publicly hanging to gradual torturing to death in concentration and extermination camps, in murders of individuals and of whole groups of the Polish population, and particularly of those Poles who, in his opinion, stood in the way to the consolidation of German power and to the germanization of the territory placed under his responsibility, and selecting his victims especially from among the educated classes or politically active members of the peasant and working classes ;

(iii) Participated in the persecution and wholesale extermination of Polish citizens of Jewish race or origin residing in the territory under his authority, by :

(1) murdering them on the spot ;

(2) concentrating them in a small number of ghettos, mainly in the Lodz ghetto whence they were being gradually deported and murdered, mainly in the gas-chambers of the extermination camp at Chelmno, to which were also brought Jews from other occupied countries and from the Reich ;

(3) submitting the Jewish population from the very beginning of the occupation to every possible kind of vexation and torment, from verbal and physical effronteries to the infliction of the most grievous bodily harm, in a way calculated to inflict the maximum of physical suffering and human degradation ;

(iv) Participated in ill-treating the Polish civilian population of that area and in persecuting them, by :

(1) inflicting grievous bodily harm or causing their health to break ;

(2) over a long period, illegally depriving civilians of their freedom by keeping them in jails, prisons and various camps, in particular in the concentration, extermination and forced labour camps set up in the territory of the so-called " Wartheland " or outside it, which deprivation of freedom went hand in hand with torture of the individuals concerned ;

(3) deporting to the area of the so-called " General Government " or to forced labour camps in the Reich of people of whole villages and streets, and of families and individuals ;

(4) deporting Polish children and youth against the will of their parents and guardians, and placing them in German families or educational institutions in the Reich with the purpose of germanizing them completely, cutting them off from all contact with their families and things Polish, and giving them German christian names and surnames ;

(v) Acted to the detriment of the civilian population by taking part in widespread robberies and thefts, extortion and appropriation of the movables of Polish citizens, and of all public property in the territories in question (especially of articles of cultural value and works of art), either by seizure, confiscation or by simply depriving of them persons being deported ;

(vi) In the occupied territory under his authority he caused the inhabitants to suffer inadmissible degradation by reason of their nationality or race, and at the same time gave a privileged position to the German population in that :

(1) he introduced and put into effect regulations concerning the " Deutsche Volksliste " (Lists of German Nationals), by which that part of the Polish population which did not apply for inclusion in the lists was deprived of public rights deriving from the Polish citizenship ;

(2) for the Polish population thus deprived of public rights he created a set of regulations known in National-Socialist jargon as the *Polenstatut*, which completely deprived the Poles of all rights to real property and permitted the confiscation of all undertakings and all movable property ; deprived the Poles of the right to choose their employment, fixed their conditions of employment and wages, of the scale of nourishment, terms of health and other social services for the Poles at a considerably lower level than that for the Germans ; drastically limited the protection of Poles by the civil courts, laid upon the Poles more severe responsibility for crimes, providing the death penalty even for minor offences ; prohibited to form associations of Poles and the entry of Poles into German associations ; forbade their taking any part in cultural life or sport, and compulsorily limited the education of Polish children to its elementary stages only ;

(3) of his own initiative and will aggravated the harshness of the regulations issued by the central authorities of the Reich for the territory over which he had authority, by increasing the severity of the labour laws for the Poles, by introducing special courts, and by further raising the age for contracting matrimony ;

(vii) Persecuted the Polish population by exceeding in practice the legal and administrative regulations, and acted in such a way as to :

(1) keep the population in constant fear of life, health, and personal liberty ; and of losing their remaining property ;

(2) degrade the Polish population to a social status of serfs ruled by the *Herrenvolk*, which took the form of constant insults to the Poles on the part of the authorities ; of creating for the Poles extra-legal obligations towards the Germans, from raising the hat to all Germans in uniform and descending off pavements, to prohibiting them from occupying positions in private undertakings, where they would have to give instructions to German employees ; and by allotting to the Germans to the detriment of the Polish population easier conditions of life and better material comforts on the grounds that such were " nur für Deutsche " (for Germans only) ;

(3) deprive Poles of all confessions of the means of freely practising their religious cult, especially the Catholics who constituted 90% of the population of that area. This was achieved by :

(*a*) removing the majority of the clergy by killing them *en masse*, either on the spot, in concentration camps or by deporting them to the General Government ;

(*b*) depriving the Poles of so many of their places of worship as to amount in many localities to complete deprivation of the possibility of practising their cult, while at the same time forbidding them to attend places of worship reserved for the Germans ;

(*c*) setting forth the time limit of religious services and forbidding certain kinds of them ;

(viii) Ruthlessly exploited the Polish labour force of the said area in order to increase the war potential of the German Reich by such a system of payments and allowances, conditions of employment as to cause the gradual wearing out of the people, the only object of which was to increase production needed for the total war of conquest that the Germans had undertaken against Poland and the Allied Nations ;

(ix) Acted to the detriment of the Polish State and nation, especially of the civilian population of the area under his control, by directing activities intended to destroy the cultural values of the Polish nation by :

(1) closing down or destroying all Polish scientific and cultural institutions, the entire press, the wireless, cinemas and theatres ;

(2) closing down and destroying the network of Polish schools both elementary, middle and high, and closing down all Polish collections, archives, and libraries ;

(3) destroying many of the relics and monuments of Polish culture and art or transforming them so as no longer to serve Polish culture ; and limiting the Poles in their own culture by confining the use of the Polish language to private intercourse and forbidding its use in public life or places of instruction.

2. SPECIFIC CHARGES

In view of the fact that the Supreme National Tribunal did not deal in its Judgment in detail with the specific charges brought forward against the accused Artur Greiser, and in its findings of a general character relied to a very large extent on the Indictment, it was thought necessary to provide on the following pages an extensive summary of the relevant part of the Indictment.

(i) *Aggression*

Under this heading, the Indictment put on record, in the first instance, all the principal events in the development of international law, whereby aggressive war, once one of the essential prerogatives of sovereignty, has come to be regarded as an institution deprived of all legality.

After having recalled the relevant provisions, *inter alia*, of the Covenant of the League of Nations, the Geneva Protocol of 1924 and the Briand-Kellog Pact of 1928, the Indictment stated that in the non-aggression pact signed in Berlin on 26th January, 1934, Poland and Germany undertook not to employ force in their mutual relations and to base them on the principles of the Briand-Kellog Pact. The two countries bound themselves, in the event of a dispute that could not be settled by direct negotiation, to seek other peaceful means of solving it, but in no circumstance to have recourse to the use of force.

This pact was concluded for ten years, with the right of denouncing it six months before the end of that period. Thus Germany in crossing the Polish frontier on 1st September, 1939, violated all her solemn undertakings, and the leaders of the German Reich and their helpers committed a crime against international law by commencing a war of aggression. There was no justification for breaking the obligations they had assumed ; for there

were not even in existence the circumstances that might have entitled Germany to appeal to that more than doubtful clause, which modern international law no longer considers valid, the clause called *rebus sic stantibus.*

After having made reference to the legal principles laid down in the London Agreement and Charter of 1945, the Indictment went on to describe the plans of the Nazi Party to wage an aggressive war. It stated that the aims of the National Socialist Party, and especially of its leaders, were (*a*) to set aside by force the provisions of the Treaty of Versailles concerning the limitation of armaments accepted by Germany ; (*b*) to recover by force those territories lost by Germany as a result of the World War of 1914-1918 and other areas, allegedly occupied by peoples " racially Germanic " ; (*c*) to obtain by force areas in Europe, and in other parts of the world, proclaimed as Germany's *Lebensraum.* As the means towards those ends they used the stratagem of bad faith in assuming international obligations, and, in the event of States refusing the demands of the Third Reich, the means of aggressive war.

According to the plans of the Nazi party, the invasion of Austria and Czechoslovakia had to be followed by fraudulent incorporation into the Reich of the Free City of Danzig in violation of international treaties, and by the occupation of Poland, which was considered as part of the German *Lebensraum.* Here, for the first time, German plans met with resistance, an event for which the Nazi plan envisaged the use of aggressive war as a means of enforcing its intentions.

The accused, Artur Greiser, was a member of the Nazi Party from the spring of 1930 ; he then occupied the post of Deputy *Gauleiter* of the party for the Danzig district, and eventually (from May, 1934) he was concurrently President of the Danzig Senate under the one party government of the Nazi. In that capacity, the accused prepared, directed, and later, together with Gauleiter Forster and other members of the Nazi Party in the territory of the Free City of Danzig, put into effect the aggressive measures against Poland, which were part of the Party's plan, and, in the territory of the Free City of Danzig, he executed the first stage of that plan in relation to Poland.

(ii) *Seizure of the Free City of Danzig*

In Article 100 of the Treaty of Versailles Germany renounced all rights to the city of Danzig in favour of the Allied and Associated Powers, who undertook to organise that territory as a Free City under the guarantee of the League of Nations, and to put into effect the agreements between Poland and the Free City of Danzig in regard to Poland's rights accorded to her in Article 104 of the Treaty. By a resolution of 17th November, 1920, the Council of the League of Nations accepted the report of the High Commissioner and agreed to the Constitution, which laid down that the Free City should implement its obligations under the Versailles Treaty and other international obligations. No change was to be made in the Constitution of the Free City of Danzig without the agreement of the High Commissioner and of the Council of the League of Nations.

The Constitution of Danzig was subsequently confirmed by the Council of the League of Nations on 14th June, 1922. The international obligations in respect of Poland were based, in the opinion of the Permanent Court of

International Justice, on Article 104 of the Treaty of Versailles and on the Paris Convention of 9th November, 1920. No unilateral alteration of these obligations could have been made.

On 11th March, 1926, the Nazi Party was set up in Danzig and organised itself as the so-called *Gau Danzig*. On 15th October, 1930, Forster became Gauleiter. In 1931 a Nazi newspaper began to appear in Danzig, called *Der Danziger Vorposten*. It was published under a slogan that constituted an open incitement to violate international agreements: "Zurück zum Reich-gegen vertraegliche Willkür" (Back to the Reich—against the arbitrariness of treaties).

On 20th June, 1933, the Nazi Party succeeded in assuming authority. On 28th November, 1934, the accused, Artur Greiser, became President of the Senate and took immediate steps to secure the realisation of his Party's plan. In addition, as a member of the Nazi party, he fulfilled the function of Deputy Gauleiter.

In open violation of accepted obligations, a decree forbidding the activities of the Communist Party was issued on 26th May, 1934. Similarly the activities of the Social Democratic Party were forbidden on 14th October, 1936; those of the German National Party on 14th May, 1937, and of the Centre Party on 21st October, 1937.

Simultaneously and equally in violation of its obligations, the institutions of the Free City of Danzig were brought in line with the corresponding institutions in the Nazi Reich. After an open challenge made by the accused when he appeared before the League of Nations on 4th July, 1936, a law was passed on 1st November, 1937, establishing the so-called *Staatsjugend* in Danzig. This was a name to disguise the Nazi organisation, *Hitlerjugend*. In accordance with paragraph 2, the President of the Senate, the accused Greiser, appointed a certain Goepfert as *Staatsjugendfuhrer*. After 4th May, 1939, this organisation, which was intended to help in realising the Nazi criminal aims, was being openly called *Hitlerjugend*.

On 12th November, 1938, the Senate, presided over by the accused, passed new regulations governing civil service, which were similar to those in the German Reich. Officials were now bound faithfully to serve only the Free City of Danzig and its National Socialist leaders. According to paragraph 4, officials had to take an oath of loyalty to the National Socialist leaders, and according to paragraph 42, they were bound to report any activities injurious to the National Socialist Party.

On 21st November, 1938, the Senate passed a law on the protection of German blood and honour, which was followed on 1st February, 1939, by the anti-Jewish laws. On 5th June, 1938, an *S.S. Heimwehr* was constituted as the militant organ of the National Socialist Party and of the Danzig Senate for preparing the first stage of aggression against Poland and the incorporation of the Free City into the Reich. On 23rd August, 1939, in violation of international obligations, a law was passed, on the strength of which Gauleiter Forster was appointed head of the State of the Free City of Danzig. The signature of the accused figures on this illegal document. On the strength of this a new Constitution for Danzig was passed on 1st September, 1939; this transferred all legislative and executive power into the hands of the Head of State and proclaimed the incorporation of the

Free City of Danzig into the Reich. In accordance with the plan, agreed upon between the members of the National Socialist Party, this act was followed by a law passed that same day by the Reichstag. On 8th September, 1939, there followed the annexation, in violation of treaties and international law, of part of occupied Poland and its incorporation into the so-called Gau Danzig-Westpreussen, of which Forster became the head.

Thus the accused, as deputy Gauleiter and President of the Senate, by combining his party and State functions brought about a similar unification of State and party as existed in the Reich by virtue of the law of 1st December, 1933, the object of this being to further the realisation of the criminal plans of the National Socialists. Forster's speech of 4th October, 1936, made to the leaders of the National Socialist movement of Gau Danzig, showed that he, as leader of the party, and the accused, as deputy Gauleiter, were in full agreement as to the plan of action. The relations between Forster, the *Parteiführer*, and Greiser, the representative of the State, were so close that nothing was done that had not previously been agreed between them.

Thus, it was charged, the accused is guilty not only of preparing an aggressive war on Poland, but also of putting into effect the first phase of that aggression, *i.e.*, the violation of the Statute of the Free City of Danzig and of the rights accorded to Poland in this territory.

(iii) *Incorporation of Western Polish Territories into the German Reich*

On the authority of the Führer's Decree of 2nd October, 1939, concerning the incorporation " of the eastern marches " into the Reich, there was created within the boundaries of the Reich a *Reichsgau Posen*, later called the *Wartheland*, that included the District of Poznan (Posen), the greater part of the District of Lodz and several of the eastern counties of the District of Pomorze (Pomerania). At the same time the so-called *General Government* was created by the Führer's Decree of 12th October, 1939, on the eastern border of Wartheland. Both these decrees came into force on 26th October, 1939, at the time when the accused Artur Greiser became *Reichstatthalter* (Governor). Thus he was empowered to give orders and instructions to the entire administration except for the Posts and Railways.

According to the Decree of 8th October, 1939, Polish law was to continue binding in as far as it did not conflict with the German law. In practice, however, the former was always disregarded, and from the very beginning the law of the Reich was adopted in all spheres. German was the only language, and the Poles were at liberty to use their own language only in private contacts.

Under the Reichsstatthalter was the Chief of the S.S. and Police, personally responsible to him, who at the same time represented the *Reichsführer* of the S.S. and Police in his capacity as *Reichskommissar für die Festigung der deutschen Volkstums* (The Reich's Commissar for strengthening Germanism), his task being to deport Poles and settle Germans in their place. In principle the Chief of the S.S. and Police for the *Gau* received his instructions through the Reichsstatthalter. Subordinated to him were also the Inspector of the Civil Police (Orpo) and an Inspector of the Security Police (Sipo). The Reichsstatthalter was also head of the local government organs, themselves very limited in their powers. Thus, this system ensured that all state and

local government administration, and party authority, was being concentrated in the hands of the Reichsstatthalter, who was also in certain respects the legislative authority.

Polish citizens in the western Polish territories were divided into two categories: citizens of the Reich, or such as were to become so under certain conditions, and those remaining under specific protection of the German Reich (*Schutzangehörige des Deutschen Reiches*), the latter category comprising principally persons of Polish nationality. The regulations introducing the Lists of German Nationals were issued by Greiser on his own authority on 28th October, 1939, while in others of the incorporated territories such lists were not introduced till 4th March, 1941. As a consequence of these regulations the Poles lost all rights resulting from their citizenship.

Greiser was also responsible along with Himmler as Reichsführer of the S.S. and Police, for initiating the secret regulation concerning " productive Poles " (Leistungspolen). Only Poles included in this category were entitled to the same working conditions, food and clothing as Germans. The idea of these regulations originated from Greiser.

(iv) *Exceptional Legal Status of Poles*

The basic weapon used by Hitlerism in its struggle to exterminate the Polish element in the " incorporated " territories was legislation. The new laws were made partly by Greiser himself and partly by the central authorities of the Reich, and were intended to deprive the Poles of all their rights except those essential to maintain Polish manpower at a minimum physical level. The regulations issued by the German authorities covered various spheres of life and together constituted a set of measures known as *Polenstatut* (Status of Poles) aiming systematically and consistently at one and the same end. These regulations were as follows:

(1) *As regards Property*

The first restrictions were introduced at the very beginning of the occupation, and involved a prohibition of sales of real property and undertakings, and in many cases the seizure and confiscation of the individual's entire estate.

The confiscation of Polish property was based on three enactments: (*a*) the Decree of 15th January, 1940, on safeguarding the property of the Polish State; (*b*) the Decree of 12th February, 1940, on the public management of agricultural and forest undertakings and properties; and (*c*) the Decree of 17th September, 1940, on the manner of treatment of the property of Polish citizens. The first decree sequestrated all real and other property of the Polish State; the second, the object of which was to secure the supply of foodstuffs, provided for the seizure of all undertakings and realty which on 1st September, 1939, were not owned by persons of German nationality, or by the State and local government authorities; in other words all Polish private agricultural and forest property was sequestrated. The right of management and disposal (except that of alienation) passed to a German company called " Ostland."

The third decree concerning the manner of treatment of the property of Polish citizens was the most far-reaching: except that belonging to *Volks-*

deutschers all property became liable to seizure, management by a commissar, and confiscation. Seizure was obligatory in the case of property belonging to Jews or persons abroad, and optional where dictated by the public interest, especially when in the interest of the defence of the Reich, or of strengthening of germanism. Property taken over could be confiscated. The property of corporate bodies was liable to seizure, if in 1939 Polish citizens had owned the greater portion of the capital or had a decisive influence on the board. Although in the regulation itself there was a pretence of seizure being optional, in practice all Polish real property and undertakings were taken over and confiscated in accordance with secret instructions for implementing the regulation.

Where persons were deprived of their property they were often, and at the beginning always, deported. This same object was also achieved by the so-called " transfer to other quarters," when those involved were obliged to leave all their property behind.

(2) *As regards the Law Regulating Employment*

There were numerous regulations making it impossible for Poles to manuacture or trade, or to engage in the professions or to be civil servants. To start an undertaking required the permission of the Reichsstatthalter or of a department authorised by him, and in practice such permission was never given. Poles could not be civil servants, as they did not possess citizenship of the Reich. Permission to practise in the professions was given until further notice only to doctors, dentists, veterinary surgeons, midwives and nurses, as this lay in the German interest.

The Poles were not entitled to choose their employment, but were bound to accept that allotted to them by the German Labour Offices.

Deportation of Poles to Germany for forced labour began in the earliest days of the occupation. Their wages were limited (Tariff of 8th January, 1940), and they were bound to wear a distinguishing mark : a purple " P " on a yellow background.

Most important, however, were the regulations issued by the German Minister of Labour on 5th October, 1941, governing the treatment of employees of Polish nationality. Their object was to create a sharp dividing line between Polish and German workers. Thus the Poles were deprived of some of the social benefits for workers, although they were under obligation to pay in the normal contributions. The Poles were not able to bring even claims for payments of services before the courts. The regulation governing the legal rights of private individuals (Ostrechtspflegeverordnung) provided that if the court was in doubt whether or not the claim of a Pole against a German was contrary to the state or national interests, it should seek a decision from the President of the High Court, who in his turn could refer the matter to the Reichsstatthalter. Their decisions were binding on the court. This same regulation laid it upon the judge, when administering the law, to see to it that his interpretation of the regulation was favourable to the interests of Germany ; if not he was at liberty not to implement the regulation, but to decide the case as demanded by the interests of the incorporation of the territories into the Reich. In these circumstances it was almost impossible for any Pole to obtain satisfaction from the courts.

(3) *Penal Code for the Poles*

The Council of Ministers for the Defence of the Reich, considering that it was not enough to increase penal sanctions laid down in the regulation of 6th June, 1940, and introduced into the " incorporated territories " on 4th December, 1941, issued a new decree containing a penal code for Poles and Jews in the " eastern incorporated territories." This code provided for the death penalty (and only in less serious cases imprisonment) to be applied where Poles and Jews showed an unfriendly attitude to the Germans by exhibiting hatred to them or acting in a manner likely to incite hatred of them, especially should they express themselves unfavourably about Germany, tear down official announcements, or otherwise cause harm to the property of the Reich. The term of imprisonment inflicted was usually up to ten years in a concentration camp, or up to fifteen years in a detention camp.

In the hearing of cases the principle was adopted that judge and prosecutor should apply the procedure of German criminal law, but only as they thought fit. Further, this regulation deprived the Poles of the right of defence, in particular they were unable to institute appeals or to bring private cases.

(4) *Education*

That the solution of the question of elementary schools for the Poles was unusual was due to the influence of Greiser and the somewhat different policy he adopted in cultural matters affecting the Poles. Towards the end of September, 1939, an official, acting on the instructions of Greiser, arranged with the competent Minister for the establishment of schools for Poles (Polenschule) in which a minimum of instruction would be given in the German language. When, however, this arrangement was set aside by Minister Rust who in his memorandum of 6th July, 1940, ordered the establishment of Polish elementary schools with Polish teachers and Polish as the language of instruction, in order that the Poles should not acquire too good a knowledge of German, Greiser protested through the intermediary of the President of the Poznan Regency Office. As a compromise it was decided that Polish children should be taught (by unqualified German staff) in German, with the reservation that they should not be allowed to master the German language.

(5) *The Poles' Lingual Rights*

Greiser personally settled the limits within which the Polish language might be used in the territories over which he had authority, and decided that the Poles should be allowed to speak Polish only among themselves and would have to speak German in the presence of Germans.

(v) *The Fight with Religion*

(1) *The Clergy*

The German attempt to destroy everything Polish resulted also in a strong repression of the Church, for in the Western Polish territories the Polish clergy were regarded as the intellectual leaders, especially in country districts. This first took the form of mass arrests of the clergy, who were then

either murdered or placed in concentration camps. The Church's losses in respect of clergy were very serious. According to the estimates submitted by the respective dioceses, they were as follows :

Killed (in camps or shot) :

From the arch-diocese of Gniezno	180
From the arch-diocese of Poznań	212
From the arch-diocese of Wloclawek	240
From the arch-diocese of Lodz	120
	752

Hundreds of other clergy from the above dioceses were put in prison or in concentration camps ; for example, from the arch-diocese of Poznan alone 147 clergymen were in this way deprived of liberty. The Suffragan Bishop of Wloclawek, Michal Kozal, after grievous sufferings in various prisons and concentration camps died under torture in Dachau camp on 26th January, 1943. The Bishop Ordinary of Lodz, Wlodzimierz Jasinski, and the Suffragan Bishop of that same diocese, Kazimierz Tomczak, were interned. The Suffragan Bishop of the diocese of Poznan, Walenty Dymek, was put under house arrest and the supervision of the Gestapo.

These arrests were made without grounds or reasons being given. A considerable proportion of the clergy was deported, or else had to go into hiding. This resulted in such a situation that, for example, in the whole arch-diocese of Poznan there were only 28 Polish priests carrying out their duties, where on 1st September, 1929, there had been 681 exclusive of those in monasteries. Similarly all monastries were dissolved and their members either placed in camps, or sent to forced labour.

(2) *Religious Practices*

The Ordinance of 27th May, 1941, forbade Polish clergy to perform religious services for Germans and *vice versa*. Above every entrance to any Polish church there had to be clearly displayed the words in German : " Polish Church." German churches were to display a notice " Forbidden to Poles." A German clergyman could conduct a service in a Polish church only with the permission of the Gestapo. In such an event a notice was to be displayed " from — o'clock till — o'clock admittance only for Germans."

Religious instruction was regulated by the Ordinance of 26th May, 1941. This was followed by the Ordinance of 19th August, 1941, laying down regulations for the teaching of religion to German youth. These emphasised that religious instruction could be given only by associations recognised by the State, and that of 19th August drew attention to the fact that at that time no such associations existed in the " Wartheland."

(3) *Churches, Cemeteries and Church Property*

As is shown by an official memorandum of 22nd December, 1944, instructions were issued by Greiser as a result of which church property passed under the administration of the German Local Government (Gauselbstverwaltung). According to this memorandum about 1,200 to 1,300 churches

were closed in the Wartheland. Another official memorandum of 19th April, 1941, proved that Greiser reserved to himself the decision as to what was to be done with church property in each individual case. Statistics show that of the 387 churches in the area of the Poznan Regency, Polish Catholics had the use of only 20 ; the others were closed, used as warehouses, or put to some other secular use. Polish statistics show that in this archdiocese 345 of the 371 parish churches were closed, as well as all succursals and chapels. A similar state of affairs existed in other dioceses of the " Wartheland."

The churches closed were despoiled completely. A memorandum from the Gestapo submitted to Greiser, No. II b.1 of 21st March, 1942, informed him that in the action taken for security reasons against the Polish churches at the beginning of October, 1941, money, foreign exchange, script, church books, documents, libraries, and other important written material was removed from the Church offices and from the houses of the priests, while chalices, montrances, candlesticks, candles and linen were removed from the churches. The candles—about 20 tons—were handed over to the army, and the linen—about 6 tons—to the German Red Cross. The memorandum drew Greiser's attention to the fact that many articles of value, such as pictures, furniture and carpets, still remained in the churches and recommended that they should be taken over.

On 21st November, 1941, Greiser ordered the removal of all bells from Polish churches, both bronze and steel, and including those recognised as being protected by the law concerning ancient monuments and relics. By the Ordinance issued on 15th October, 1944, all organs in churches whether closed or open, were sequestrated. Irreplacable losses were inflicted to Polish culture by the removal or destruction of church archives and libraries. The regulations concerning cemeteries in the " Wartheland " issued on 3rd October, 1941, transferred the ownership of all confessional cemeteries to the local council. There were to be separate cemeteries for the Poles, or, if not, a separate area was to be fenced off in the German cemeteries for them and this was to have an entrance of its own. An order dated 11th March, 1941, required all inscriptions on Polish gravestones to be removed. The insurgents' Memorial in Poznan cemetery was demolished on the orders of the Reichsstatthalter.

Not only the property of the church itself was confiscated, but also that of church institutions and foundations. It is sufficient to mention " Caritas," the various brotherhoods, associations, etc.

(vi) *Measures against Polish Culture and Science*

Gauleiter Greiser's order of 13th December, 1939, on the seizure of all libraries, books, and periodicals in the territories under him, in as far as they were the property of Poles, was a further evidence of the total character of the war against Polish culture.

This war began with the liquidation of the intelligentsia and clergy : the entire Warthegau was denuded of Polish professors, scientists, teachers, udges, advocates, doctors, engineers and other representatives of the classes that constituted the greatest hindrance to the germanization of the country.

The cultural centre of Poznan University was closed immediately on the entry of the Germans, and most of the professors were arrested and either

sent to concentration camps, or imprisoned, or else held as hostages, or deported to the General Government.

In December, 1939, some of the professors were released from prison and deported to the General Government, being deprived not only of their private property, but even of their MSS. and scientific works. Altogether, as a result of these measures, there perished 24 professors, 15 supernumerary professors, 26 assistants, and 20 university officials.

The buildings of Poznan University were taken over by the German authorities and used for various purposes. For example, the buildings of the Anatomical Department were converted to a crematorium in which eight thousand bodies were burned, four thousand of them Poles and the rest Jews, who had been shot or hanged and carefully catalogued by the Gestapo. Gradually the entire organisation for higher education in Poznan ceased to exist, the German institutions were being set up in its place. On 27th April, 1941, a German university was opened in Poznan, which came under the authority of Greiser, as he became its president ; all teaching came under the German rector, Dr. Carstens, and he from the beginning laid down that " in this university of the East there will be no place for scientists dealing with problems only from the objective point of view."

All other cultural institutions suffered a fate similar to that of the university. Gauleiter Greiser laid upon the members of the Hitlerjugend the special duty of destroying all the libraries of the Society for People's Libraries, whose premises were demolished and the books burned and destroyed. Similarly school libraries were destroyed.

In Poznan a Book Collecting Point (Buchsammelstelle) was organised in the church of St. Michael to which close on two million volumes taken from public and private libraries were brought from all over the Wartheland. Among these were books from the Scientific Society (about 110 thousand volumes), the library of Poznan diocese (about 100 thousand volumes), the library of the Gniezno chapter (about 9 thousand volumes), that of the Wloclawek chapter and others. These books were sorted in the Collecting Point, after which some were distributed to various German institutions, while the others were sent to a paper-mill for pulping.

The various archives met with a similar fate. Those belonging to the state and church were confiscated and collected in various places ; some documents were destroyed, others sent to Germany. Museums and art collections were confiscated, altogether some 30 public museums and more than 100 private collections, among them the Ethnographic Museum in Poznan, the Municipal Museum, the Army Museum, and the Diocesan Museum in Poznan ; in Kornik the castle and its collections, the collections in the museums at Goluchow and Rogalin, and also collections, in churches and cathedrals, such as those in Gniezno, Poznan and other towns. In the Wielkopolski Museum in Poznan the collection of monumental sculptures by Waclaw Szymanowski called the " Procession to the Wawel " was destroyed. Similarly, in many places, private collections were destroyed by the Selbstschutz, army or other German organisations.

Special care was devoted to the destruction of Polish memorials. In Poznan the Germans demolished the monument of the Heart of Jesus, of the 15th Lancer Regiment, the Wilson memorial, the Slowacki, Chopin,

Moniuszko, and Mickiewicz monuments and in Gniezno the Boleslaw Chrobry monument, and in Lodz the Kosciuszko monument. These monuments were destroyed in an especially insulting manner and the destruction was accompanied by mockery and ridicule. These acts were given great emphasis in the German Press.

The Polish Press and all Polish publishing was destroyed. Not one Polish paper appeared throughout the Wartheland, and the scientific periodicals were confiscated. All Polish printing works were confiscated and given to German undertakings. It was also forbidden to print any kind of books in Polish and all the 397 Polish bookshops in the incorporated territories were closed and their stocks of books confiscated. On 6th April, 1940, the Gestapo forbade the sale of all French and English books, and even the sale of the music of Chopin and other Polish composers. Lending libraries were closed and towards the end of 1940 the Propagandaamt published a list of forbidden Polish books that comprised some 3,000 titles.

All the Polish theatres (in Poznan, Lodz and Kalisz) were closed and their buildings and equipment put at the disposal of German theatres ; Polish cinemas were transformed into German ones. The opera and the Music Conservatory in Poznan were put at the disposal of German institutions. Even choral societies were closed, and the famous Poznan Cathedral Choir, that was known all over Europe, was disbanded and its director, Father Gieburowski, imprisoned.

The broadcasting stations in Poznan and Lodz were made into German stations ; all wireless receiving sets belonging to Poles were confiscated, and listening to foreign stations, especially London, was punished with death.

War was even declared on Polish inscriptions not only of the streets, in tramcars, on shops and in public places, but even inside private houses on such things as letter-boxes, lavatories, bread bins or salt-tins. The Order of 17th April, 1940, which was published in the *Ostdeutscher Beobachter* under the aegis of Gauleiter Greiser, required the removal of all Polish inscriptions by 15th May, 1940, and the authorities of the Wartheland did their utmost to banish from that area every slightest trace of Polish life and culture.

(vii) *Economic Exploitation*

The agricultural lands to the East of its frontiers were necessary to a Germany that was setting out to conquer Europe. They were just as necessary as its armaments industry in the West, and its synthetic petrol works or synthetic rubber plants, as necessary as the mines of Silesia.

Just as the riches of these lands in the East were necessary to Germany, so the people inhabiting them were unnecessary, since they were capable of upsetting her calculations. Herein lay the whole significance of Germany's economic and social policy towards the Polish population and resources of the incorporated territories.

(1) *Policy towards the Population*

Ruthless, immediate and complete elimination of both Poles and Jews from economic activity. This policy was to be followed by complete extermination of the Jews and partial extermination of the Poles, at least

of those of the governing classes ; and later in the future complete extermination of all Poles.

The Poles, still largely in the majority, were reduced to the role of dependent labourers without any possibility of social advancement. They were all, irrespective of sex, obliged to work after the age of 14. Young Poles having received some sort of instruction were bound immediately on completing their fourteenth year to report to the Labour Office and were directed to work which often exceeded their strength ; none of the regulations concerning the employment of juveniles were valid, but they were bound by the general regulations concerning the employment of adults, and only distinguished by receiving a lower scale of wages. These were stabilized at the level of 31st August, 1939 (Lohnstop). Greiser then introduced tariffs for the various branches of industry, according to which the Poles were refused the right to remuneration for overtime, Sunday work, night work, or work on holidays. Later, Greiser explicitly decreed lower remuneration for Poles ; this was not to exceed 80% of that to which a German in the same group would be entitled. No holidays were to be granted to Poles until the end of the war. The working day was to be ten or more hours.

(2) *Policy in the Economic Sphere*

Germany intended the incorporated territories to be her store-house of grain and potatoes, and that was the role allotted to them even after the conquest of huge fertile expanses in Russia. The land was taken over by Germans, the Poles being left on it as labourers.

Industry was " rationalised." This consisted in arbitrarily shutting down undertakings, combining others without regard for the rights of their owners, and in incorporating the industry of the new territories into the economic plan of Germany. The crafts, to the Germans, were not so much one of the components of the economy, as a political instrument which they could use to germanize the new lands with a German element.

Greiser's prices policy was to keep them at a level lower than that in the neighbouring parts of the Reich, so as to encourage Germans to settle in the East. Thus, these Germans while receiving the same nominal income were able to live more cheaply.

In the first few months of the occupation a start was made in dispossessing large and medium landowners, of whom there were many in the counties of Poznan, Kalisz and Wloclawek. This expropriation of estates and farms affected about 450 thousand families. That the programme was not able to be carried out in its entirety, was due only to the lack of suitable German settlers.

Farms had to work to supply the Reich with foodstuffs and that is why the Poles were turned off the land as German settlers arrived from the Baltic countries, Roumania, Hungary, other parts of Poland, and from the Reich itself. Nevertheless, even those Poles whom it had not been possible to replace, were not the masters of the land they cultivated. They lived under the constant threat of being turned off their land and were not able to dispose of the fruits of their labours.

Expropriation was easier in the towns, to which more Germans came. Besides the institution of *Treuhänder* allowed factories, businesses and workshops to be taken over without interrupting their activities. These Treuhänder simply removed the owner and carried on the business on German account. Thus, in Poznan and other towns in the Warthegau Poles were removed from factories, shops, bookshops, printing-works, cinemas, hotels, restaurants, cafes, and even from the larger workshops of artisans. Polish banks were taken over by German institutions and Polish accounts confiscated. In February, 1941, the *Haupttreuhandstelle Ost* was managing 364 large, 9,000 medium, and 76,000 small Polish industrial undertakings, and 9,120 large and 112,000 small Polish trading firms.

(viii) *Deportation of the Polish Population*

In the *Ostdeutscher Beobachter* of 7th May, 1941, there appeared a proclamation by Gauleiter Greiser which contained the following paragraph :

> " For the first time in German history we are reaping the political advantage of our military victories. Never again will so much as a centimetre of the land we have conquered belong to a Pole. The Poles may work with us, but not as masters, for which they have shown themselves lacking aptitude, but as hirelings."

The behaviour of the German authorities in the incorporated areas was in accordance with the principles announced in Greiser's proclamation. On Sunday, 22nd October, 1939, the deportation of Poles from Poznan had already begun. It was carried out with the help of the Field Police and the Selbstschutz. The first victims were prosperous Poznan merchants ; they were turned out of their homes, the keys of which were handed over to the *Umsiedlungsamt*, and they were loaded into lorries and taken away.

In this way Poznan, of whose 279 thousand inhabitants before the war some 2% were of German nationality, was gradually depopulated. Up to February, 1940, some 70 thousand of the citizens of Polish nationality had already been deported. In their place came Baltic Germans and a large number of officials and army personnel with their families from the Reich. During 1940 some 36,000 Baltic Germans were settled in this manner, taking over houses, and flats, from which Poles had been driven. These homes still contained all the previous occupants' possessions, for the Poles were only allowed to take hand luggage with them.

These deportations, of course, took place throughout the entire Province of Wartheland. Deportations began with the towns. From the country the landowners were the first to be deported, then the Germans began driving away the peasants.

The city of Lodz received particular attention, for of its 700 thousand inhabitants more than 450 thousand were Poles and some 200 thousand Jews. Deportation of Poles begun in December, 1939, at a time of severe frost. On 21st February, 1940, the newspaper *Grenzzeitung* announced triumphantly that the centre of Lodz had been entirely cleared of Poles and was reserved exclusively for Germans. In September, 1940, the number of those deported from Lodz was estimated at 150,000. The name of the town was changed to Litzmannstadt, all inscriptions in Polish were removed and an attempt was made to give the town a purely German character.

Several thousand children aged between 7 and 14 were removed from orphanages, foster-parents, and even taken from their own parents, and sent into Germany to be brought up as Germans. There were particularly blatant cases in several districts of this seizure of children.

To make it impossible for Poles to avoid deportation an order was published in the *Ostdeutscher Beobachter* of 10th December, 1939, instructing all Poles and Jews in Poznan to remain within their own homes between 9.30 p.m. and 6 o'clock in the morning. During this period the Gestapo would make its appearance and drive people out, often without giving them time to dress. These people were driven out into the streets and taken in lorries. Families were split up ; the strong were sent to work in Germany, as were young lads and girls, and the others were loaded into cattle-trucks, taken to the General Government and turned out there in any chance place and left to their fate.

Those to be deported were obliged to leave their homes in the best order. They were allowed to take with them at the most two changes of underclothes, a blanket and an overcoat, but no article of value, no jewellery, not even such things as gold-rimmed spectacles. In cash they were allowed to take from 20 to 200 ztoty (£1-£20.)

People frequently died in the cattle-trucks in which they were deported. The doors of the trucks were shut and no one was allowed out. On 27th January, 1940, 26 corpses were found in a cattle-truck that reached Krakow from Ponzan. At another station one truck was found to contain 30 children who had been frozen to death. The bodies of the victims were often frozen to the floor of the trucks.

There were no definite principles governing deportation : one day only lawyers were taken, another day it would be all Poles from a particular street irrespective of profession ; the following day the victims would again be chosen because of their profession.

In place of those who were deported came Germans from various corners of the world. According to the *Litzmannstädter Zeitung* of 17th May, 1940, about 70,000 Germans came from the Baltic States. Of these 30,000 were settled in Poznan itself, and 21,000 in the Warthegau. These Germans were given some 3,000 industrial and trading concerns, and some 1,000 artisans' workshops ; in addition they were given 2,300 farms in the Warthegau. These figures relate to the period prior to May, 1940.

About 135,000 Germans were brought to the Wartheland from Volhynia, South-Eastern Poland and the district of Bialystok. It was officially stated that Germans from Volhynia had occupied more than 1,200 farms in the Warthegau, of these some 6,800 were in the neighbourhood of Lodz, 5,500 round Inowroclaw, and about 200 round Poznan.

In the autumn of 1940 about 35,000 Germans were removed from the districts of Lubelsk and Chelm in Eastern Poland and about half of them settled in the Wartheland. It was at this time, too, the transports began to arrive from Bessarabia and Bukowina, as well as settlers from the Reich.

The German Ministry of Agriculture planned to transfer some two million people from Western Germany to Poland. Up to September, 1940, how-

ever, only 100,000 from the Reich had been settled there, and there were in addition some 75,000 of those Germans who had left Poland after the 1914-1918 war.

The *Volkischer Beobachter* of 7th January, 1941, gave the following figures for the Germans from different countries settled in western Poland :

Latvia	51,000
Esthonia	12,000
Eastern Poland	130,000
Chelm and Lublin	31,000
Bessarabia	490,000
Bukowina	90,000
Dobyudza	14,000
Total	818,000

The organisation of the transfer and settlement of these thousands was in the hands of a number of institutions, chief of which was the *Einwanderer Zentrale*, with its seat in Berlin. In this latter were representatives of the subordinate organisations from the various towns of the Wartheland. Settlement in the country was conducted by such institutions as *Deutsche Umsiedlungsgesellschaft*, and *Bauernsiedlung* with its multiplicity of offices, which was lavishly financed by the Ministry of Food in the Reich. The supply of agricultural equipment was organised by the *Zentralbeschaffungstelle.*

The territories incorporated into the Reich were before the war inhabited by 10,730,000 people, over 9,500,000 of whom were Poles. They were now to become a purely German country. The German plan envisaged the deportation of at least five million Poles, so that the remaining 4½ million Polish peasants and labourers could be made into Volksdeutschers.

(ix) *Humiliation of the National Dignity*

On 28th October, 1940, Gauleiter Greiser made a speech in Poznan defining the legal position of the Poles in which he stated that naturally only Germans were citizens of the Reich ; the Poles were merely under " protection " and so as a population second-rate. It would, he said, be necessary to have a special set of laws defining this subordinate position of the Polish nation.

The matter was expressed even more explicitly by Regierungspresident Jaeger, who called it "Völkische Schlechterstellung der Polen." Behind these statements was the idea that the German state ought to exploit the Poles as it saw fit, and allow its citizens to do likewise.

In November, 1940, Gauleiter Greiser in a speech made at Gniezno said the following : " Colleagues, as political leaders you must adopt in your work the principle that who is not with us, is against us and will be destroyed in our Wartheland. It is my explicit command that you be brutal, hard and, again, hard."

On 22nd September, 1940, Gauleiter Greiser circulated regulations for a complete segregation of Germans and Poles. It contained the following points :

(1) Any person belonging to the German community who maintains relations with Poles beyond such as are rendered essential by duty or economic reasons, will be placed in protective custody. In serious cases, especially where the member of the German community has occasioned deeper injury to the interests of the German state through his relations with Poles, he shall be placed in a concentration camp.

(2) Every case of repeated friendly contact with Poles will be considered an infringement of the order. The only exception is contact with relations of the person's husband or wife who belongs to a foreign national community. Any member of the German community caught by the police in the company of persons of foreign nationality in a public place will have to show that his or her contact with Poles is an economic necessity.

(3) Members of the German community caught being publicly friendly towards Poles can, if such contact cannot be credibly explained by service necessity, be placed in protective custody.

(4) Members of the German community who embark on sexual relations with Poles will be placed in preventative arrest. Polish women who permit themselves sexual relations with members of the German community may be sent to a brothel. In cases of lesser gravity it is left to the discretion of the inspectors of the Gestapo, the S.S., or their representatives, whether the object, that is the enlightenment and education of the member of the German community, can or cannot be achieved by instruction and exhortation.

(5) As regards juveniles of under sixteen, where the above remarks apply to them, the punishments for having relations with Polish women will be inflicted, but will depend on the degree of their education. Those whose duty it is to look after the young must be informed of every juvenile placed in protective custody.

(6) In supplementation of the principles of repression outlined in points (1)-(5), officials who tolerate the infringement of these rules of conduct, will be liable to disciplinary punishment by the appropriate body. My office must be informed of every such case.

This order was signed by Greiser.

It is worth adding the words of a German official high in the administration of the Warthegau : " There must be no incorrigible apostles of humanitarianism and false sentiment as a result of sympathy for the Polish nation aroused by the deportations."

The policy of segregating Poles from Germans very soon turned into systematic humiliation and insulting of the Polish nation, and at the same time every sort of prohibition and order was employed to lower its standard of living, fertility and strength.

In shops Poles were allowed to be served only after certain hours, during which Germans were served. (Police Regulation in Poznan of 8th November, 1940, published in the *Ostdeutscher Beobachter*). In many towns Poles

were bound to raise their hats to every German in uniform and to make way for him on the pavement. The Poles were only allowed a restricted use of the railway, long-distance buses, taxis, and bicycles, and were even forbidden to use trams between certain hours. (Police Order of 2nd December, 1940, forbade Poles in Poznan to use trams between 7.15 and 8.15 a.m.) Even in public parks, like the Wilson Park in Poznan, there were such signs as : " *Kein Zutritt für Polen,*" or " *Zutritt für Polen verboten*" ; or "*Zutritt nur für Deutche,*" or " *Spielplatz nur für deutsche Kinder.*" There were notices on the trams in Poznan allotting separate cars to Germans and to Poles.

In Kutno posters with the following notice were put up : " Whoever smiles ironically, glances sideways, or fails to raise his hat on seeing a German in military uniform or with a badge on his sleeve, will receive immediate severe punishment."

In many restaurants, hotels and offices in Poznan and other towns were notices to the effect that there was " No admittance for Poles, Jews and dogs." In December, 1940, the official German paper, *Ostdeutscher Beobachter,* published in Poznan, printed a statement by the chairman of the German Restaurant Keepers Association in Poznan, Reineke, condemning certain restaurants in the city for still admitting Poles. Reineke issued an order that separate rooms must be set aside for Poles.

Sexual relations between Poles and German women were punished with a death for the Pole, while the woman had her hair cut off close, or her head shaved, and was led round the place where she lived with a large placard on her chest announcing the fact of her having had relations with a Pole.

German propaganda which constantly linked Poles, Jews and Gypsies, emphasised the inferiority of these peoples. A typical exponent of this view of German superiority was the Bürgermeister of Lodz, Ubelhör, who had previously been Bürgermeister of Mannheim. On 11th November, 1939, he said in a speech : " We are the masters and we must behave like masters. The Pole is a servant and must only serve. We must have iron in our backbones and never admit even the thought that Poland could ever rise again."

(x) *Concentration Camps*

The setting-up of concentration camps for the Poles was one of the early administrative matters to occupy the German civil authorities. Before they took the charge, the German military commandant in Poznan in a letter dated 7th October, 1939, informed the Department X of the headquarters in Poznan, the head of the civil administration, the chief of police, and the City Commissar that Fort VII had been turned into a concentration camp to hold 1,200 persons and that it was expected to have forts IV-VI, and IVA-VIIIA in a position to receive a further 1,200 and 500 each respectively. In a letter dated 16th October, 1939, addressed to the various mayors, the head of the district civil administration attached to the military commander in Poznan ordered the establishment of other camps for Poles ; for the time being there were to be five labour camps for men, two camps for non-working males ; one labour camp for women, and two camps for non-working women and children. According to the preamble to the order, the purpose of these camps was to regulate conditions in the newly-won province of Poznan by segregating a large number of male Poles and Polish families, who were to be either forced to do useful work, or rendered politically harmless. The

labour camps were to be mostly for the execution of urgent forced labour building roads, railways, getting in the harvest, etc. The camps for non-working males were to be used for persecuting Polish leaders and agitators, and if need be to house the sick and crippled. The local authorities were ordered to look for suitable buildings sufficient to house 3,000 prisoners and their guards.

This order was not immediately put into force, but on 8th November, 1939, the office of the Reichsstatthalter again took up the question of these camps, especially as the Commissar for Justice had asked for the establishment of the " concentration camps " mentioned in the order of 16th October, owing to overcrowding in the prisons.

The question of concentration camps which came under Section I of the Reichsstatthalter's office, that is the section for political and national questions, was continually being brought up until 28th February, 1940. A memorandum then stated that by that time concentration camps had been established in Poznan, Lodz and Mogilna.

(1) *Fort VII*

After 7th October, 1939, a Concentration Camp known officially as " Transit Camp Fort VII " was in operation in Poznan. Here arrested persons, mainly those suspected of political activities, were in fact accommodated only temporarily. They were interrogated by the local section of the secret police and segregated into three categories : those to be tried before a court ; those to be sent to concentration camps in the Reich (Dachau, Mauthausen, Oranienburg, Gusen, Buchenwald and others) or else in Silesia (Auschwitz, Gross Rosen) ; and those to be liquidated straight away by shooting, hanging, torture, etc. In only very few exceptional cases were people released. Arrested persons were unable to lodge complaints about the behaviour of the camp guards, nor had they any means of ameliorating their position by judicial methods.

A great many of those sent to Fort VII were killed without a trial. Many were shot within the precincts of the fort, being tied to posts in the yard, and others were hanged in one of the cells, their terrified fellow-prisoners being forced to act as their executioners.

There were two special ways of killing prisoners used in the camp : drowning them in a deep tank, and throwing a brick repeatedly on the face of a recumbent prisoner and killing him off with a shot from a pistol.

The method by which part of the prisoners were killed when the camp was evacuated before the advance of the Red Army, was particularly brutal. Some 160 of the prisoners, among them some who were sick and incapable of marching, were crowded into one of the wooden huts, drenched in petrol and burned alive.

There was a Concentration Camp in Inowroclaw for prisoners of the local administration and another for those from Lodz district in Radogoszcz. There was also a special extermination camp in Chelmno.

(2) *Radogoszcz Camp*

In December, 1939, the German authorities turned some factory premises in the Radogoszcz suburb of Lodz into a camp. Here, surrounded by a

high wall, made higher still by barbed wire, was a three storied building in which were the halls for the prisoners.

Radogoszcz was not an extermination camp, but mortality in it was high. Insufficient nourishment, the state of the accommodation and lack of sanitation soon sapped the prisoners' strength. Constant beatings with sticks or whips at every roll call (four in the day) ; individual cases of killing for the slightest offence or out of the mere bad temper, or drunkenness, of the commandant or the police, decimation at the least excuse, such was the background of daily life in the camp.

January, 1945, found the camp still concerned with its normal business of killing. On the morning of 17th January, 1941, its prisoners numbered 730-750, and that same evening a transport of some 150 men from the prisons in Lowicz and Skierniewice arrived. During the night of 17th-18th January a roll-call was held. Part of the prisoners were led into the courtyard, where their attention was attracted (the precincts of the camp were strongly guarded) by a number of small barrels standing under the windows of the building, by the unusually large number of guards (Schupo and so-called Volksturm) armed with machine-guns, and by a number of police dogs. After a time the prisoners were ordered back into their halls. There the prisoners, judging by the sounds reaching them, realised that fighting was going on in the approaches of Lodz, and shortly afterwards they realised something else, namely that in the camp prisoners were being executed *en masse* by machine guns, being taken in groups from the different halls and stories. Along the surrounding wall smoke and flames started to issue from the ground floor. The fire spread rapidly from the barrels of combustible liquids. The prisoners began jumping from the windows, but the Germans shot at them as they did so. The chances of escape were of the slightest. The building burned throughout 18th January. Towards evening the Germans stopped firing. The building had burned out completely and only the outside walls were left. The floors had collapsed with their piles of charred bodies, and so had the stairs which were also piled with corpses. Of the 900 prisoners in the camp 15 survived.

(xi) *Summary Executions*

Executions without trial were of constant occurrence throughout the territory governed by Greiser. There is practically no place where such have not been discovered to have taken place, or where graves of the murdered have not been found. The arrangements for these executions was to a large extent the personal work of Greiser.

The formal authority for Greiser's powers in this matter is outlined in his letter, No. P. 2062/41 marked "Geheime Reichsache," and addressed to all higher officials immediately subordinated to him. In this letter, which to a certain extent sanctioned prevailing practice, Greiser stated :

(1) that Hitler had ordered that Greiser should be given such extraordinary powers in the administration of justice as he should wish ;

(2) that in implementation of the above Reichsminister Dr. Lamers had on Hitler's orders instructed those concerned that Greiser had, as requested been given full powers to set up summary courts ;

(3) that in view of this, in the event of any offence being committed

that endangered Germany's work of reconstruction in the Wartheland the decision whether the case was to come before a summary court or not belonged to him, so his instructions were that every case of sabotage with a political character was to be reported to him at once, when he himself would decide how it was to be conducted ;

(4) that the summary courts thus created had powers to pronounce sentence of death, or of committal to a concentration camp, but that he, Greiser, could always make use of his powers and either personally or by telephone order the death sentence to be changed into detention in a concentration camp, or *vice versa* ;

(5) that henceforward all Poles sentenced to death in his province by special courts for crimes of a political character would come under him as far as execution of the sentence was concerned ;

(6) that should he for reasons of political expediency consider it desirable that a death sentence pronounced by an ordinary or special court should be carried out by hanging—he would issue the instructions.

The execution of ten Poles on the sports ground at Sieradz on 17th September, 1941, will serve to illustrate how these orders of Greiser's were put into effect and how such executions were carried out. This execution was carried out on the orders of Greiser by a detachment of S.S. The report submitted that same day by the local Police Commander and handed to Greiser by the Chief Commander of the S.S. and Police, stated that the prisoners were shot for sabotage (arson) and that some 500 Poles of both sexes were forced to witness their execution.

Another example is that of the execution at Tuchorz on 9th August, 1942, when fifteen Poles brought by car from Poznan were hanged in the presence of 200 Poles gathered together from the neighbouring villages. In a speech a Gestapo Officer stated that the fifteen had been sentenced by Gauleiter Greiser for the murder of Policeman Markwitz, so as to deter the Poles from similar deeds. In future 50, or even 100 Poles would be killed for one German.

A further case is that of the 25 Poles shot on 22nd May, 1941, in the village of Mala Gorka as reprisals for the alleged burning by a Pole of a German farm. There was no other proof of this than the bare word of a German, whom local opinion considered capable of having set fire to it himself. The announcement posted up alleged that among the victims were persons close to the incendiary, his accomplices and professional criminals. In fact, the victims were local inhabitants of unblemished reputation taken haphazard and who had nothing whatsoever to do with the incendiary ; and, as a result of statements made by a local Volksdeutcher one of the chosen victims was released, and another, a neighbouring school-teacher, taken in his place.

(xii) *Persecution of the Jewish Population*

One of the objects Germany intended to achieve by the war was, as Adolf Hitler had himself said on many occasions (his speeches on 30th January, 1939 ; 1st September, 1939 ; 8th November, 1940 ; 30th January, 1942 ; 8th November, 1942), the complete extermination of the Jews in Europe. Immediately on their entry into the Vojewodship of Poznan and those parts of Lodz and Pomorze which with it were later to form the Wartheland, the

German army, the S.S. and police, the civil authorities and Nazi party began systematically to exterminate the Jews. According to Polish statistics there were more than 360 thousand Jews living in the territories of the above on 1st September, 1939.

First of all there were excesses and acts of violence on the part of individual Germans ; then the local German authorities began ordering action against the Jews on their own initiative and as yet without the instructions of a higher authority. These did come, but sometime later. All excesses, however criminal and illustrative of the " creative " ingenuity of the lower officials, enjoyed the approval of Greiser, who personally directed the entire administrative and party machinery.

The most important methods used were :

(1) Encouraging and organising local *pogroms* by specially trained bands brought to the places for that purpose ;

(2) Cruelty to children and old people ;

(3) Seizing men and young women off the street and taking them by car to unknown destinations, after which all trace of them was lost ;

(4) Constant visitations by day and night on all sorts of pretexts, during which the victims would be insulted and often robbed ;

(5) Removing Jews from dwellings, entire streets, or whole districts, without any notice being given ;

(6) Seizing Jews for immediate compulsory labour, and killing them on its completion ;

(7) Burning and destruction of synagogues and houses of prayer, often of artistic value, and defiling Jewish cemeteries ;

(8) Arranging street shows for the army, party members, and the rabble, where Jews were forced to dance, do " gymnastics," and strike each other, or in which they had their beards cut off, etc.

From the western part of the above territories, however, the Jewish population disappeared during this first phase, a proportion of them being expelled under terrible conditions into the General Government. In the eastern parts, where there were many more Jews, the Germans set about creating closed Jewish quarters in the larger towns. At the beginning this was done on the pretext of it being a measure of preventative hygiene, and the name " ghetto " by which they were known, was forbidden to be used ; it was not till the Germans began openly persecuting the Jews that they were referred to as " ghettos."

The living conditions in these ghettos became gradually very bad. Mortality increased and by 1942 had reached 20%. From October, 1942, onwards the Lodz ghetto was nothing less than a forced labour camp. Almost its entire population lived a barrack existence in the places where they worked. In the winter of 1941/42 the first large scale deportations of those not working (old people, children, and the sick) took place. More than 45 thousand were sent to the extermination camp in Chelmno. In ay, 1942, about 12 thousand were sent off, and in September, 1942, 20 nousand. While people were thus being sent from ghetto to ghetto foreign Jews were arriving in transit mostly from Austria, Czechoslovakia and

Germany, and shared the fate of those previously removed. In August, 1944, the Lodz ghetto was finally liquidated, and transports were directed to the camp at Auschwitz.

It must be mentioned that Jews in concentration camps were particular objects of torture and died sooner than did the others. They did not enjoy the same rights as the others, such as writing and receiving letters or Red Cross parcels. And in the camps periodical selections were made from the Jewish inmates, and sent to be killed.

(xiii) *Chelmno Extermination Camp*

The extermination camp in Chelmno was typical and excellently organised from the point of view of the " technique of destruction." Lying some 60 km. from Lodz it served the Warthegau. Transport from outside that area, especially from abroad, always came through the Lodz ghetto which was the main collecting point for the camp in Chelmno.

The existence of the camp was kept a strict secret, and no concrete information about it ever reached the ghetto in Lodz. Those condemned to be destroyed were kept in ignorance of the danger up to last moment. The new arrivals were led into a large hall and there told to undress. After that they were taken down a long corridor " to the bath." The corridor ended at an open door against which a long closed lorry had been backed. In most cases the Jews got unresistingly into the lorry that was supposed to be taking them to the bath. Any attempted resistance was repressed by force. The lorries held from 80-90 persons. The doors were closed and the motor started. A special pipe led the exhaust fumes into the body of the lorry, and, after four or five minutes, when the cries and struggling had died down, the lorry drove to a wood some 4 km. away. Here in a specially enclosed and guarded part of the wood the corpses were thrown out of the lorry, thoroughly examined, and then burned in specially constructed furnaces with a capacity of 100 bodies.

The Sonderkommando Kulmhof was active from 8th December, 1941, to 7th April, 1943, when the camp was closed. In 1944 the camp resumed its activities, but for reasons that have not been ascertained, these stopped after destroying ten transports, and the camp was again closed down. A commission was sent from Berlin to see whether all traces had been properly removed.

It must be taken that more than 300,000 persons perished in Chelmno. These were practically all Jews, mostly from the Warthegau, but a smal percentage also from the Reich and foreign countries (Czechoslovakia Austria, France, Luxembourg, Italy, etc.). In addition it has been proved that others besides Jews also died in Chelmno.

During excavations at Chelmno a pit 14 foot 6 inches deep containing more than 24,000 spoons and 5,000 scissors was discovered. In it, too, many identity cards, among them some Czechoslovak, were also found.

3. EVIDENCE OF EXPERTS

Apart from evidence given by a number of witnesses who testified as to facts set forth in sections (iv)-(xiii) above, and statements made by witnesses before the Allied authorities in Germany, which were read during the trial,

the case for the Prosecution rested overwhelmingly on legal enactments and administrative orders, and regulations, issued by the accused and other German authorities, as well as on evidence submitted by a number of experts called by the Tribunal. The former were contained in several dozens of volumes placed before the Tribunal, the most important of them having already been briefly referred to in the preceding part, dealing with specific charges.

The evidence given by some of the experts, and on which the Tribunal based to a large extent its findings and judgment, is summarised in the following pages.

(i) *Role assigned to the Annexed Territories*

(*Expert : Professor W. Jastrzebowski, University of Lodz*)

According to the German *Grossraumwirtschaft* plan, the economic structure of the so-called secondary European countries was to be made incomplete, and the normal functioning of their economies made dependent on collaboration with the German Reich and other countries forming the *Grosseuropa*. At the same time the economy of the Reich was to be organised as a self-supporting unit, which would in war emergency work more or less smoothly, without outside help. In the first place it was planned to attain self-sufficiency in the domain of agriculture and food supplies. This required large areas suitable for agriculture.

Such territories have been found in Poland and that was the origin of the " annexed territories." The plan also provided that those territories were to be populated by the Germans, and that all posts controlling the local economy were to be placed in German hands. The authors of the plan did not want these territories to be inhabited by Poles, as they feared that in war this could make the German economy dependent on their behaviour.

Long-range German plans embraced the whole of the Polish territories, but the immediate plan of colonising Polish areas with the German population applied to the annexed territories only. In their endeavours to remove the Polish population from these territories the national-socialist authors and executors of the plan decided to act quickly, directly and ruthlessly. This course of action was dictated by pre-war experiences with the Polish population in Germany. Since the times of Bismarck a strong pressure, employing all legal and administrative means was applied against the Polish population, with a view to germanizing it. However, the limited protection afforded by law enabled the Polish element within the Reich not only to maintain its position in the economic and social sphere, but even to expand it. These facts were well known to the National Socialists, who came to the conclusion, that this time it was necessary to make an end to half-measures.

Another reason, according to the Nazis of paramount importance, justified the plan in their eyes. New agricultural territories were also required as a breeding ground for the German nation. Despite all efforts made by the Nazis in the years preceding the war, the general trend of the demographic development in Germany remained unsatisfactory. The Germans feared that the population of the Slav countries, and of Poland in particular, would increase so quickly as to become a menace to German plans of expansion.

To counteract this tendency they wanted to raise the number of the German rural population, which they considered would be more prolific, than the inhabitants of towns and industrial areas.

In this respect it is particularly interesting to quote a passage from the article written by the defendant Greiser in 1941, entitled " Wartheland." He said : " The whole of the Wartheland will become a granary as the former province of Poznan had been for more than a century. The only difference will be that, concurrently with the production of German bread, the country will be settled more and more densely in a planned, long-ranging and centrally controlled way, and so the granary shall become at the same time a thriving place for children and thereby an eternal source of blood for the nation." To this Greiser added that : " The eventual settling of these territories exclusively by German people is the condition of attaining the established aims of Greater Germany."

Professor Jastrzebowski further explained that by the " German East " the Germans understood all territories up to the Ural mountains, and even had spoken of regaining for the German race the lands of the Caucasus. The annexed Polish territories, which according to the National Socialists' plans worked out before the war, reached to the well-known Knesebeck line, drawn during the Congress of Vienna, and had been extended by Hitler to the rivers of Rawka and Bzura, were to constitute but the first stage of the plan. They were to be differently treated than the *General Gouvernement*. They were to be completely germanized and integrated into the Reich. They constituted the most prosperous part of Poland, where most of the industry was situated and the land yielded highest crops. That was why. the Germans called it the *Mustergau* (model district), or *Exerzierplatz* (place of exercise).

The amalgamation of these territories with the Reich was made complete. All German political, economic and administrative institutions had been introduced there at once. That made the removing of Poles from these territories and in any case from all key positions in the local economy essential. The German economic régime was based on an autonomous organisation and within that system on the *Fuhrerprinzip*. Wide scope was left to the initiative and creative power of the individual and therefore leading posts could be entrusted to reliable people only. That is why all Poles had been at the very outset, even before any formal regulations were issued, deprived of any influence on the economic life of the country, their property having been confiscated.

The " General Gouvernement " was treated in a different way. It was exploited for the benefit of the Reich, but it had its own separate economic legislation. The Polish population was left there for the time being and had a certain economic freedom and even occupied sometimes leading positions. This was the reason for the Germans to separate the General Government from the Reich and the annexed territories with a customs boundary and to introduce currency restrictions.

Contrary to the economic structure of the General Government, the annexed territories were to become an integral part of the self-sufficient Greater German economic area. The German plan provided for the raising of the living standards of the population inhabiting those territories and in

particular of the farmers. The latter's standard of life was to be maintained at the same level as that of the town population. With this aim in view enormous amounts were to be spent after the war on agricultural investments. The density of the farming population was to be kept at a relatively low level, not exceeding 50 inhabitants per square kilometre. This, and intensive farming were to contribute to the improvement of living conditions.

The Germans were the only ones to benefit under the scheme. At the beginning the planners wanted to remove all Poles from the Wartheland, but later the view prevailed that a certain number of them should be left as agricultural workers confined to barracks, having an entirely different legal status than the Germans, and being completely cut off from normal economic life.

These methods contributed to the sharp drop in the birth rate of the Polish population living in the Wartheland. It was characteristic that, as less harsh methods were used with regard to the Poles living in other territories integrated into the Reich, such as Silesia and Pomerania, the decline of the birth rate in the latter territories was less accentuated.

Poles in the Warthegau were to be treated as objects and not subjects of the economic policy imposed by the German rulers. This is best illustrated by the following words of Greiser :" Germans are the lords and Poles are the servants." The Polish servants were indeed to be exploited to the utmost.

The Nazi plan in the Warthegau was carried out with the greatest speed. The importance attributed to the plan by its authors could be measured by the circumstance that, after the occupation by the German army of certain Soviet territories, they were also bringing in German colonists from the Baltic countries, the Ukraine, and other Soviet lands, and settling them in the Wartheland, although those Germans could have played a great role as outposts of Germandom in Russia.

The expert further stated that the economic plan for the Warthegau was also synchronised with the extermination of the Jewish population. As already stated, the economic plan provided for the setting up of such conditions for Germans that they should attain high living standard. This was to be achieved, *inter alia*, by closing down small industrial enterprises and handicraft workshops, which were considered not productive enough. As small industrial enterprises and crafts were mostly in Jewish hands, the plan of exterminating Jews fitted well into the economic plan for the annexed territories.

Professor Jastrzebowski was also called to express opinion on the report made by German students, who investigated the decline of the natural increase in the Polish population of the Wartheland during the war, and which was produced during the trial. He stated that there was no doubt the Nazi leaders having had a general plan for the extermination of the Polish nation. Several utterances have been made in this respect by German statesmen or leading officials and they were confirmed by subsequent action.

Rauschning's book published in France at the beginning of the war and entitled " Hitler told me," was most enlightening in that respect. He quoted several conversations with Hitler and his lieutenants on this subject. The German policy in this domain consisted in introducing a high age limit for marriages, in separating forced labour according to sexes, in sponsoring

contraceptives, propagating pornographic publications and in organising prostitution. Consumption of strong alcohol was also promoted by all means. Tuberculosis, venereal diseases, total abolition of all assistance to mothers and children, bad living quarters and lack of protection against high infantile mortality, contributed to the less rapid increase in population. Most, if not all, of those measures were mentioned by Rauschning in his book.

(ii) *Organisation of German Authorities in Wartheland*

(Expert : Dr. M. Pospieszalski, Lecturer, University of Poznan)

This expert outlined the organisation of the German authorities in the Wartheland and in particular the position of Reichsgovernor Greiser. The latter in his capacity of Reichsstatthalter was a superior of the S.S. and police commander. The S.S. commander as head of the so-called *Umwandererzentralstelle* (Central office of migration), was supervising the deportation of Poles from the Wartheland and the settlement there of the Germans. In this capacity he was directly subordinated to the S.S. Reichsfuhrer, Himmler, but close connections existed between his duties and Greiser's activities. The liaison was mainly established through the so-called *politischer Referent* attached to the Reichsgovernor. The former fulfilled at the same time the functions of the leader of the State Police Headquarters in Poznan, and it was through him that Greiser was informed of all steps taken by the S.S. and police commander.

The principle of administrative unity and the Fuhrerprinzip found full application in the Wartheland. Greiser controlled directly all administrative services, with the exception of post and railways. Greiser was also Head of the local government. Finally, the branches of the *Haupttreuhandstelle Ost* in the Wartheland, which as trustees administered the property confiscated from the Poles were also subjected to the authority of the Reichstatthalter. A still higher degree of concentration of authority in the Reichsgovernors hands was achieved by the actual merging of the public and party administration in the annexed territories. Greiser was appointed Gauleiter of the Warthegau on 21st October, 1939, and Reichsgovernor of the Wartheland on 26th October, 1939. Further down the ladder, *Kreisleiters* were also appointed *Landrats*, and the lowest public administrative units were supervised by special plenipotentiaries appointed by the party. Most matters appertaining to population policy were concentrated in the hands of the party, which settled them through the *Gauamt fuer Volkstumpolitik*, subordinated to the Gauleiter.

Greiser as Reichsstatthalter was also entrusted with legislative powers and could issue laws within the scope of the general German legislation. His first anti-Polish decree was issued on 20th September when he was still at the head of the Civil Administration attached to the Military Command in Poznan. It ordered the confiscation of several large printing works in Poznan on behalf of the Reich. This was done at the time when even from the German point of view the *debellatio* of the Polish State had not yet been achieved. On 28th September, 1939, he issued a decree invalidating all legal transactions in real property carried out from 1st October, 1938, till 30th September, 1939, and requiring administrative confirmation of all such transactions carried out from 1st October, 1918, till 1st October, 1938.

Towards the end of 1941 Greiser took the legislative initiative with regard to Polish marriages in the Wartheland. He decreed that men could not marry before 25 and women before 22. The corresponding German decree applying to all Poles in the Reich and in the annexed territories was issued on 3rd May, 1943, nearly two years later. It also empowered all Reichsgovernors to raise the age limit. Greiser made use of those powers by raising on 27th May, 1943, the age limit to 28 years for men and 25 years for women.

Initiative was also taken by Greiser with regard to the introduction of the lists of people of German nationality. On 28th October, 1939, Greiser issued a decree introducing such lists in the Wartheland. All people, who considered themselves to be German had to register. They were classified in several categories. This decree was issued two days before the decree on the annexation of the Wartheland into the Reich was published. A similar decree for all territories in the East annexed by Germany was issued on 7th March, 1941.

Greiser made use of powers conferred on all Statthalters by the decree of the Ministers Council for the defence of the Reich of 4th December, 1941, and introduced courts of summary procedure in the Wartheland in August, 1942. These courts consisted of three members, all employees of the State Police. They either acquitted the accused or sentenced them to detainment in concentration camps or to death. Greiser also decreed that all such sentences should be submitted to him for confirmation.

The expert further stated that the party exerted supreme power over the State machinery. Justices and administrators who applied and interpreted existing law were expected to take into account in the first place the political interest of the Reich. If, *e.g.*, the Judge considered that any law was contrary to that interest, he was obliged simply to ignore it and decide in accordance with the interest of the Reich. The interest of the party in the Wartheland was mainly centred round the population problem. Administrators, justices, doctors, all Germans in leading positions in the Wartheland were expected to follow general directives given on these matters by Greiser.

Under the system introduced in the Wartheland, Poles were deprived of all subjective rights but had all the obligations, with the exception of military duty. Their legal and actual status was in every respect worse than the status of the Germans.

(iii) *Losses in Polish Population*

(*Expert : Dr. St. Waszak, Director of the Statistical Office in Poznan*)

The expert drew the attention of the Tribunal to the importance the Germans always attached to statistics, which resulted that every major action was based on thorough statistical preparation. This was not different with regard to the population policy in the Wartheland and the results achieved were carefully noted and compiled into comprehensive statistics. Special statistics were made by the Germans with regard to all changes within the Polish population and separately with regard to the Germans. This was particularly apparent in the reports of all Landrats. The German population was continuously increasing, because of the influx from the East, while the Polish population became static and resembled the Jewish group, against which the main struggle was waged. Reports showed anxiety if

any symptoms of a favourable evolution within the Polish group could be noticed. Immediately questions were asked what ought to be done to counteract it.

The expert estimated that the Polish population of the territories forming the Wartheland numbered about 5 million before the outbreak of hostilities in 1939. The yearly increase in population amounted before the war to about 60,000 per year. According to German statistics the *total* natural increase in the Polish population in the Wartheland during the 5½ years of German occupation amounted to 60,000 only. According to the expert the natural increase in the number of Poles in the Wartheland would have been higher by some 200,000 during the occupation years, should there be no pressure exerted against the Poles.

The introduction of the age limit for Polish marriages played a great role in these losses. The age limit of 28 years for men and of 25 years for women was chosen by the Germans on the basis of statistical data in their possession. These were showing that total numbers of marriages were depending on marriages concluded in the age groups of from 25 to 29. The birth rate depended in turn on the number of marriages. German statistics were very accurate and enabled them to draw proper conclusions. They also had great positive experience in the rising of the natural increase in the German population and so were able to use the material obtained in reverse with regard to the Polish population.

The expert admitted that the decline of the natural increase in the Polish population was partly due to war conditions. This was the general demographic law of war. But, even allowing for this, the decline should not have exceeded 50%, bringing the natural increase from 60,000 to 30,000 people per year. Instead, the increase was of 10,000-12,000 people per year in spite of the fact that the Wartheland was spared all war operations. Thus the results of the Second World War with regard to the increase in population taken in conjunction with losses caused by direct German actions, were catastrophic and amounted in this part of Poland to about two million people.

It was most enlightening that, at the same time when the natural increase in Polish population was drastically falling down, the natural increase in the German population of the Wartheland was so rapidly rising, that it surpassed the most audacious expectations of the German promoters of the German breeding system. Should this evolution within the German group have continued the Poles in the Wartheland, even without using any more drastic and direct methods of extermination and simply by bringing down the natural increase in the Polish group to zero point, would have been within 20 years on the road to total extinction.

The prosecution, submitted that the accused was personally responsible for the loss to the Polish nation of two million people in the Wartheland, as well as for the loss in the natural increase in population by 200,000.

(iv) *Other Expert Evidence*

The case for the prosecution rested also on evidence submitted to the Tribunal by the following experts :

Dr. A. Peretiatkowicz and *Dr. L. Ehrlich*, Professors of International Law

in the Universities of Poznan and Cracow respectively, who described the recent developments in the sphere of international criminal law concerning the responsibility and trial of war criminals ; *Dr. E. Taylor*, Professor of Economics in the Poznan University, who described the general German economic policy in war time ; *Dr. J. Deresiewicz* of the University of Poznan, who submitted a report on the treatment of Polish man-power in the Wartheland ; and Professors *St. Dabrowski* and *S. Laguna* of Poznan University, who were heard on other technical matters.

4. THE CASE FOR THE DEFENCE

The accused, who was defended by two counsel appointed by the Tribunal, pleaded not guilty. His general line of defence was the following. He admitted that he was a member of the Nazi Party and the S.S., and had held the highest official positions mentioned in the Indictment. Until the outbreak of war he was substantially in agreement with the Nazi Party programme. However, he was always against war as an instrument of attaining its aims and later, during the war, he found himself in disagreement on certain matters of policy, and even submitted on four occasions his resignation as Gauleiter and Reichsgovernor, but this was never accepted. The accused also admitted that in the capacity of the Reichsstatthalter of the Wartheland his task and aim was to subordinate that part of Poland directly and entirely to the German Reich. In this respect, however, all his activities were based on the Führer's decree of 8th October, 1939, by which the western Polish provinces were incorporated in the Reich, and the series of special regulations that followed were in direct consequence of this law which was binding upon him. Therefore, he claimed, for all matters of policy and measures applied and carried out in this territory the responsibility rested entirely and exclusively with Hitler and Himmler.

In particular, the accused submitted that most of the discriminating decrees and regulations signed by him, or issued under his authority, were enacted and put into effect on express orders of Hitler or Himmler, and that in his actions he, the accused, was always strictly supervised by the central German authorities. This supervision went to such an extent that even his official pronouncements and declarations of policy, which were to be carried out by his subordinates, had been subject to censorship of, or were being in fact drafted for him by government and party officials in Berlin. He also alleged that, although the departments of state administration were concentrated in his office, all of them were receiving orders and directives directly from the respective ministries of the Reich, which he was not in the position to change or disregard.

The accused further defended himself by alleging that neither the ordinary police, nor the security or secret police (the Gestapo), nor the S.S. were ever subordinated to him in any way or measure, and that the chiefs of these and other special services, and offices established in the territory for specific purposes, always took their orders and instructions directly from Berlin, and particularly from Himmler. The accused, therefore, disclaimed any responsibility for anything that had occurred in concentration and other camps, and for what had been done as regards the extermination of Jews, deportation of Poles, expropriation of property, denationalisation, persecution of churches and other incriminating activities, and alleged that he had

no influence whatsoever in these matters. Moreover, in regard to many instances of undoubtedly criminal acts committed by German authorities and officials, which were brought before the Tribunal, the accused denied any knowledge of them.

For instance, the accused stated that the regulations dealing with the establishment of special Courts for Poles were enacted on Hitler's express order in spite of the accused's opposition, and later, after they had been put into force, he always endeavoured to limit the functioning of these courts, and frequently availed himself of the prerogative of mercy in cases where the Poles were sentenced to death. As regards the plan for deportation of Polish population from the annexed territories, the accused submitted that this was a matter entirely with the German police authorities and the Gestapo, and particularly with Himmler, and therefore the responsibility for the measures taken rested exclusively with them. Similarly, the accused insisted that the action taken against the Churches was directed and supervised by the central authorities in Berlin, and particularly by the main office of the Nazi Party, the central office for the security matters, and by the Reichsministry of the Interior.

The accused claimed further that in fact he had only a restricted responsibility for general matters of policy, and inasmuch as various administrative acts were concerned only for those which had been dealt with over his signature and were previously referred to, or discussed with him by his subordinates. He could not accept responsibility for any other such acts in view of the fact that various Germans offices and lesser authorities were authorised, in accordance with the general practice, to use discretionally in certain cases and matters the signature of the Gauleiter and Reichsstatthalter when issuing orders and regulations.

As regards his activities before the war, in Danzig, the accused admitted that he signed various enactments which brought about changes in the original status of this Free City, but he did not regard these acts or any other steps taken by him in his capacity as President of the Senate as having been in contravention of the Constitution of Danzig. Some of these steps had even been taken with the consent or knowledge of the Polish Government and of the High Commissioner of the League of Nations. In any case they were put into effect on orders received either directly from Hitler or from the central authorities of the Nazi Party. The accused alleged that he was always trying to settle the Danzig problems in a peaceful manner and was consistently opposed to solving them by way of force.

In order to corroborate his line of defence and the allegations referred to above, the accused introduced as chief witness on his behalf August Jäger, who was his deputy and chief of the Reichsstatthalter's office. As will be shown later, the evidence of this witness, who was himself implicated in many activities of the accused and against whom the Prosecution was making investigations in order to bring him to trial as a war criminal, was not accepted by the Tribunal as a *bona fide* evidence.

The defending counsels submitted some further defences and raised a number of legal questions which will be referred to in the second part of this report.

5. THE JUDGMENT OF THE TRIBUNAL

The Supreme National Tribunal found the accused, Artur Greiser, guilty of all the crimes with which he was charged in the Indictment, with the one exception that he did not personally commit any murders or acts of cruelty, or inflict bodily harm. For these crimes the Tribunal sentenced him to death, and in addition pronounced the loss of public and civic rights, and forfeiture of all his property.

The sentence was carried out on 21st July, 1946, in public by hanging.

In passing the above sentence on Artur Greiser, the Supreme National Tribunal was faced with the duty of deciding upon the specific character of the crimes of which he was accused in the Indictment, and then of evaluating the weight and relation of the groups of evidence submitted during the hearing.

In regard to the crimes as a whole, the Tribunal stated that the crimes with which he was charged, although they were committed directly in the territories forming part of the Polish State, or at that time linked with it in a special manner (the Free City of Danzig), yet by their nature they went much further than the sphere of Polish interests. They were directly linked up with the criminal conspiracy initiated by the National-Socialist leader, Adolf Hitler, and during eighteen years directed against the fundamental values of civilisation. In view of this it was necessary for the Tribunal to appraise first and foremost that group of charges specified in parts (A) and (B) of the Indictment, which were directly concerned with the part played by the accused as one of the first, most active and most trusted collaborators of Adolf Hitler in their attempt to realise their plan for German unbounded rule in East Central Europe by way of waging aggressive war, exterminating the neighbouring peoples and destroying their culture.

As regards the evidence presented, the Tribunal stated that it attached particular weight to the opinion of the experts and their explanations on international law, German administrative law and economic law, and to the statistical and medical evidence. Similarly, it attached great importance to the documents of various kinds, speeches, publications, and official correspondence.

Taking into account all this evidence the Tribunal came to the conclusion that the accused, Artur Greiser, in the gradually unfolding plan for aggressive war on a world scale, was one of the chief instruments, and especially in Danzig where conditions were the most delicate. Hitler's aggression against Poland, the Tribunal said, was prepared methodically. In the period from 1934-1938 it was masked behind seeming, hypocritical agreements concluded with Poland, but after that the " criminal invasion " was embarked upon by taking advantage of favourable political conditions and German propaganda and agitation, with a purposeful aggravation of the dispute over the Free City of Danzig. In the plans of Hitler and his fellow conspirators, Danzig was to be the " sally port " through which the avalanche of Hitler's armed might would roll to conquer the territory of the Polish State and to destroy utterly the Polish element, in order to make it a German " Lebensraum " for ever.

To realise this plan, the Judgment says, it was necessary to choose a person who was intelligent, fanatically given over to the idea of a Greater Germany,

and at that time " enthusiastically " (to use the accused's own expression) devoted to his leader, apparently conciliatory, and able hypocritically to mask his aggressive mission, and one who was at the same time without scruples or moral principles in his public life. The choice of Artur Greiser and the conspiratory understanding between the two men explains why a man who during the first World War was a modest officer in the German Navy attained dizzy heights in the Party and State, the moment Adolf Hitler came to power in Germany. The accused was entrusted with one of the main Party functions (deputy chief of the branch of the NSDAP in Danzig) and put in the principal administrative posts (senator for internal affairs, then vice-president and president of the Senate), in order that he might through such long-term activities bring about an internal revolution in the Free City of Danzig when the time came. This took place on 23rd August, 1939, when, as President of the Danzig Senate, Artur Greiser, in violation of international law and agreements (Article 104 of the Treaty of Versailles, and the Polish-German non-aggression pact) on Hitler's orders made Gauleiter Albert Forster Chief of " Danzig State," who in turn illegally incorporated the Free City in the Reich by unilateral act a week later.

The accused, the Tribunal went on, successfully carried out the criminal order of his leader. From first to last all his explanations that he, actuated by " good will," sought to create a *modus vivendi* between Danzig and Poland, were in flagrant contradiction both to the logic of the facts and to the evidence put forward during the hearing. For these reasons the Tribunal considered the charges contained in sections (A) and (B) of the Indictment to be fully justified, and the facts mentioned in the said sections of the Indictment to have been proved by the opinions of the experts, the documents put in and the evidence of trustworthy witnesses.

With regard to section (C) of the Indictment, that is the crimes committed by the accused in his official capacity as Gauleiter and Reichsstatthalter of the so-called Wartheland, the Tribunal considered some specific questions of law relative to the pleas of defence submitted by the accused or his counsels. These questions will be reported upon in the second part of this report.

In respect of this group of charges which were related to crimes committed against the life, health and property of Poles and Jews, and against the freedom of worship, culture and language of the Polish population, said to have been directed by the accused, the Tribunal stated that the documents laid before it and the evidence of the witnesses has proved in their entirety the charges put foward in that part of the Indictment.

Thus, as a result of direct or indirect orders from the accused, said the Tribunal, thousands of Poles and Jews lost their lives, their property was destroyed or removed, Catholic and Protestant churches were ruined, schools and teaching centres shut down. The accused, again on his own initiative, issued such orders as those for severe restriction of Polish fertility, for limitation of the food allowed to sick children and pregnant women. In the opinion of the Tribunal the proceedings had established the accused's guilt in these respects without any possibility of doubt.

In an effort to mitigate the impression of his having hated Poland and the Poles, as was shown by a number of documents laid before the Tribunal

and by the evidence of witnesses, the accused has tried with much effort to prove his correct, even benevolent, attitude by reference to witnesses of a group of Polish men and women employed on building his palace in, or on the staff of Ludwikowo, and also by reference to a former Polish colleague of his schooldays in Inowroclaw. This duality of character, the Tribunal commented, and the fact that a German can have a " public soul " and a " private soul," which the accused had revealed, is typical. No other nation could combine in its psychological make-up the cruelty of a nationally disciplined Herrenvolk in its public dealings with others, with specious good naturedness in its family and private life. Here are two attitudes, said the Tribunal, which in the sphere of the emotions are entirely different : the ethical correctness of the " decent person " in private life, and the desire, in public life, to perpetuate Germany's rule over her neighbours, and " through her neighbours " over the world as well, in order to set " Germany above everything," an attitude that often amounted to complete moral insanity. " Thus," said the Tribunal, " the proper attitude of the accused to his ' employees ' confirmed by the evidence of certain of them in no way alters or mitigates the fact that the good natured and correct attitude of the Gauleiter to Poles never went any further than the palace gates in Ludwikowo."

B. NOTES ON THE CASE

1. THE COURT AND THE LEGAL BASIS OF THE TRIAL

The Court was the Supreme National Tribunal for trial of war criminals, the jurisdiction and powers of which have been defined in the Decree of 22nd January, 1946, in which changes have, subsequently to the trial, been made by the Decree of 11th April, 1947.(1)

The case was tried in Poznan where a short while previously the accused exercised his powers as Reichsgovernor of the Polish Territories incorporated into Germany.

The substantive law applied by the Tribunal was that laid down in the Decrees of 31st August, 1944, and of 16th February, 1945, *concerning the punishment of fascist-hitlerite criminals guilty of murder and ill-treatment of the civilian population and of prisoners of war, and the punishment of traitors to the Polish Nation.* The consolidated text of these Decrees, together with the subsequent changes, have later been promulgated in the Decree of 11th December, 1946.(2)

2. THE NATURE OF THE OFFENCES

The acts committed by the accused were crimes in violation of Article 1 paragraph 1 (*a*) and paragraph 2 of the Decrees of 1944/45 mentioned above, the provisions of which are in substance the same as those of Articles 1 and 2 of the Decree of 11th December, 1946, and which are to be found in the Annex to Volume VII of these Reports.

(1) See Vol. VII of this Series, Annex on *Polish Law Concerning Trials of War Criminals*, Part II, Section 1, pp. 91-2.

(2) *Ibid*, Part I, pp. 82-91.

Inasmuch as the charges contained in para. (C) of the Indictment are concerned, these acts were also in violation of the corresponding provisions of the Polish Civil Criminal Code of 1932 dealing with complicity in murder, grevious bodily harm, torture and ill-treatment ; further, with infringement of personal liberty and illegal appropriation of property, insulting and deriding of national dignity and that of the State, and slavery (Articles 152, 225, 248, 249, 235, 236, 246, 199, 257, 258, 259, 261 and 262). In addition, all these acts were in violation of the laws and customs of war as laid down in international conventions and established by international usages.

As regards the acts set out under (A) and (B) of the Indictment, the charges preferred against the accused were based on Articles 93, 97 and 99 of the Criminal Code of 1932, which read as follows :

Article 93, *Para.* 1. " He, who attempts to deprive the Polish State of its independence or to separate part of its territory,—is liable to imprisonment for a period of not less than ten years, or for life, or to the death penalty."

Para. 2. " He, who attempts to change by force the political structure of the Polish State,—is liable to imprisonment for a period of not less than ten years or for life."

Article 97, *Para.* 1. " He, who enters into conspiracy with other persons in order to commit any of the offences defined in Articles 93, 94, or 95,—is liable to imprisonment."

Article 99. " He, who conspires with persons acting in the interest of a foreign State or an international organisation with a view to causing acts of war or any other hostile acts against the Polish State,—is liable to imprisonment for a period of not less than ten years."

The acts contained in sections (A) and (B) of the Indictment, and to which the above-quoted provisions of the Criminal Code have been made applicable, come within the notions of criminal groups or organisations and that of crimes against peace. They are analysed more fully in the following sections of this report.

Apart from the provisions of the Decrees of 1944 and 1945 already indicated, the Tribunal based its Judgment on the provisions concerning superior orders and duress, and on that providing for additional penalties. The Tribunal also applied the relevant provisions of the Criminal Code dealing with the basic principles of responsibility for criminal acts.

3. MEMBERSHIP IN CRIMINAL ORGANISATIONS

In regard to the charge of membership, it is to be noted that the Judgment in the present case had been delivered on 7th July, 1946, that is before the pronouncement of the Nuremberg Judgment (30th September and 1st October, 1946), and at the time when the Polish war crimes legislation did not contain provisions concerning the membership of criminal organisations. These were promulgated in the Decree of 10th December, 1946, and have already been presented and analysed elsewhere.(1)

(1) See Vol. VII of this Series, Annex on *Polish Law Concerning Trials of War Criminals*, Part I, Section 3, pp. 86-7.

As has already been shown in this report,(1) the Polish Tribunal, when dealing with this particular charge, accepted the fact of the accused's membership in a criminal organisation, the NSDAP, and stated that his activities in this capacity were part of the criminal aims of that organisation, namely, the commission of crimes against humanity (genocide) and crimes against peace.

While, in pronouncing its Judgment on this particular charge, the Tribunal had no formal legal basis in the municipal war crimes legislation, it based itself on the London Agreement and Charter of 8th August, 1945,(2) and applied subsidiarily Articles 97 and 99 of the Polish Criminal Code, the text of which is quoted in the preceding section.

4. THE CONSPIRACY AND AGGRESSIVE WAR

The facts relating to the seizure of the Free City of Danzig and the aggression against Poland, and the findings of the Tribunal on these points have already been set out in the outline of the proceedings (Part A, sections 1, 2 (i) and (ii), and 5). These findings should be regarded as supplementary to the facts established, a few months after the trial under review had been concluded, by the Nuremberg Tribunal as regards the consolidation of power of the Nazi regime, the common plan or conspiracy to wage aggressive war, and the preparation for, and planning of aggression.(3)

In its Judgment, after having made general references to the Danzig issue, the Nuremberg Tribunal concluded that it " is fully satisfied by the evidence that the war initiated by Germany against Poland on the 1st September, 1939, was most plainly an aggressive war, which was to develop in due course into a war which embraced almost the whole world, and resulted in the commission of countless crimes, both against the laws and customs of war, and against humanity."(4)

It is not possible to review here in any adequate manner the particular events preceding the seizure of Danzig. This was a problem the legal and factual aspects of which became so complex that it constitutes an immense subject for itself which would require much time and space. We shall therefore refer only to the provisions which are relevant to the very origin of the international legal status of the Free City of Danzig.

By virtue of Articles 100 and 102 of the Versailles Peace Treaty of 1919 Germany renounced in favour of the Principal Allied and Associated Powers all rights and title over the town of Danzig together with the territory around it and comprised within the limits described in Article 101. At the same time the Allied and Associated Powers undertook to establish, and did establish, this town and territory as a Free City of Danzig, which was placed

(1) See Part A, Section 5, p. 104.

(2) Article 10 of the Charter of the International Military Tribunal at Nuremberg (Cmd. 6668) reads :

> " In cases where a group or organisation is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organisation is considered proved and shall not be questioned."

(3) See *Judgment of the International Military Tribunal for the Trial of German Major War Criminals*, Cmd. 6964, pp. 7-14.

(4) *Ibid*, p. 27.

under the protection of the League of Nations. In accordance with Article 103 of that Treaty, a constitution for the City was drawn up by the duly appointed representatives of the City in agreement with the High Commissioner appointed by the League of Nations. This constitution was placed under the guarantee of the League. The High Commissioner, whose permanent residence was at Danzig, was also entrusted with the duty of dealing in the first instance with all differences arising between Poland and the Free City in regard to the provisions of the Treaty of Versailles or any arrangements or agreements made thereunder.

Following the obligation undertaken in Article 104 of the Treaty, the Allied and Associated Powers negotiated a Treaty between the Polish Government and the Free City of Danzig, the so-called Paris Convention of 9th November, 1920, the objects of which were the following : (*a*) it effected the inclusion of the Free City within the Polish Customs frontiers, and established a free area in the port ; (*b*) it ensured to Poland without any restriction the free use and service of all waterways and port installations ; the control and administration of the Vistula and, with some exceptions, of the whole railway systems, and of postal, telegraphic and telephonic communications ; and further the right to develop and improve all the means of communication and installations mentioned above ; (*c*) it provided against any discrimination within the Free City to the detriment of Polish citizens and other persons of Polish origin or speech ; (*d*) finally, it provided that the Polish Government had to undertake the conduct of the foreign relations of the Free City as well as the diplomatic protection of citizens of that city when abroad.

It should also be noted that in accordance with Articles 105 and 107 of the Treaty of Versailles, and on its coming into force, all German nationals who were residents of the territory which thus became the Free City of Danzig lost *ipso facto* their German nationality and became nationals of the Free City ; and all property situated within this territory and belonging to the German Empire was transferred to the Free City or to the Polish State.

From the foregoing it will be seen that the Free City of Danzig as a separate territorial unit was placed under the protection of the international community, and the authorities of Danzig had no right to pursue a criminal German policy and no obligation to obey orders of the German Government, so much the less of the Nazi Party, as was alleged by the accused during the present trial. In fact, as has been shown, the events developed in quite a different direction, the Danzig authorities from the beginning were always trying to avoid the Treaty obligations, and differences and difficulties constantly increased as time passed on. Finally, after having denounced the German-Polish Non-Aggression Pact of 1934 on false grounds, the Nazi conspirators proceeded to stir up the Danzig issue, to prepare frontier " incidents " with the view to " justify " the attack, and to make demands for the cession of the territory. Upon refusal by Poland to yield, they caused German armed forces to invade Poland on 1st September, 1939, and incorporated the Free City of Danzig into the German Reich in violation of the provisions of Article 100 of the Treaty of Versailles.

When dealing with the charge of preparation, planning and waging of aggressive war, one of the defending counsels submitted that the international treaties and conventions concerning the renunciation of war as a

means for settlement of inter-State disputes, and especially the Briand-Kellog Pact of 1928, cannot be regarded but as a *lex imperfecta*, as they did outlaw the war but did not provide for any penalties in this respect. He also raised the defence of *nullum crimen sine lege poenali, nulla poena sine lege* as far as the Polish municipal law is concerned, but disregarded entirely in his submission the London Agreement and Charter of 8th August, 1945.

As has been shown, the Tribunal rejected these pleas in accordance with the state of international and municipal law at the time of the trial. In this respect the reader is referred to other publications of the United Nations War Crimes Commission where the relevant legal concepts and their development have been further presented and analysed.(1)

5. ANNEXATION OF OCCUPIED TERRITORY AND INTERNATIONAL LAW

The Defence claimed that the thesis submitted by Professor Ehrlich, expert on international law, that the annexation of part of Poland into the German Reich and consequently the introduction of German law and orders were contrary to international law, was at least doubtful and controversial, since in modern and total war it is very difficult to draw a line between the complete *debellatio* and a mere occupation of the enemy territory. In any case, the Defence argued, any deduction that such acts are punishable must fail as there is no provision in The Hague Regulations to this effect.

The Supreme National Tribunal did not enter into an analysis of the law regarding the substance of this submission, but stated generally in its Judgment that it regarded the incorporation of the western Polish territories as criminal. In this connection the Tribunal expressed the opinion that the hostilities begun against Poland on 1st September, 1939, did not constitute a war according to international law, but a " criminal invasion " of the territory of a neighbouring state and a violation of a pact of non-aggression concluded with that State. Consequently, the so-called " occupation " of the territories of the Polish State taken by the Third Reich by force of arms was not even an occupation in the true meaning of that word, but " an unlawful seizure of another's territory by force and compulsion." Therefore, such an act should be evaluated in accordance with the well-known maxim of Roman law that *quod ab initio turpe est, non potest tractu temporis convalescere*. But, even if one were to accept the view that it nevertheless was an occupation, though only a *de facto* one, yet it was carried out in violation of all the postulates and rules of The Hague Conventions which Germany herself agreed upon. It was a caricature of military administration as understood by international law, carried out in violation of the rights of the local population.

(1) See (*a*) The *History of the United Nations War Crimes Commission and the Development of the Laws of War*, published by the Stationery Office, London, 1948, where developments in the law regarding crimes against peace up to the delivery of judgment by the International Military Tribunal are set out.

(*b*) Vol. VII of the *Law Reports of Trials of War Criminals*, Annex on Polish Law Concerning Trials of War Criminals, Part I, pp. 82-91.

(*c*) Developments in the law relating to crimes against peace made by Judgments delivered in the Nuremberg " Subsequent Proceedings " trials, reported in Vol. X, pp. 30-40 and 102-30 ; and Vol. XII, pp. 65-71 ; and summarised in Vol. XV.

The position in international law regarding the particular issue raised by the Defence can briefly be summarised as follows. There are two essentially different legal concepts which must not be confused. One is the conquest of enemy territory, *i.e.*, taking possession of such territory by military force, which is completed as soon as the territory is effectively occupied. Conquest of part or even of the whole of enemy territory need not necessarily involve subjugation, *debellatio*, for in the first case the enemy may reconquer it, or, in the latter case and when the war is waged between more than two belligerents, the army and government of the conquered territory may evacuate their own country and join the allied army. This was exactly the case in 1939 in regard to the Polish Government and its armed forces. Subjugation is, therefore, an established fact only when one belligerent succeeded in exterminating in war another belligerent through conquering its territory and annihilating the allied enemy forces.(1) Thus, in the case of a mere conquest we are faced with a temporary military occupation which is governed by the rules enacted in The Hague Regulations insofar as they deal with military authority over the territory of the hostile State (Section III of The Hague Regulations).(2)

The principle underlying these rules is that the occupant in no way acquires sovereignty over the occupied territory, but he actually is entitled to exercise temporarily a military authority over it. This means that the occupant acquires also a temporary right of administration over the territory and its inhabitants ; and all legitimate steps he takes in the exercise of this right must be recognised and obeyed by the inhabitants.

The position thus created imposes, however, on the occupant at the same time certain duties towards the occupied territory and its inhabitants. As the right of administration is strictly limited to a *military* administration, the occupant has no right either to annex the whole or part of the territory while the war continues, or to divide it into new administrative districts for political purposes. The occupant has further no right to introduce its own law, or to make changes in the laws of the land, or in the administration, other than those which are temporarily necessitated by his military interest and the realisation of the purpose of war. Finally, the occupant has the duty to ensure public order and safety, must respect family honour and rights, individual lives, private property, religious convictions and liberty.(3) The implications of the non-observance of these principles has been fully demonstrated in the case of Poland by the facts exposed in the present trial.

In connection with the decision made by the Polish National Tribunal in regard to the question under discussion, it should be recalled that the International Military Tribunal at Nuremberg also rejected the submission " that Germany was no longer bound by the rules of land warfare in many of the territories occupied during the war, because Germany had completely subjugated those countries and incorporated them into the German Reich

(1) See Oppenheim-Lauterpacht's *International Law*, Vol. II, Sixth Edition, London, 1940, pp. 466-7.

(2) This essential difference between an annexation and a military occupation was emphatically underlined by the United States Military Tribunal which conducted the *Justice Trial*. See Vol. VI, pp. 91-3.

(3) See op. cit. pp. 337-350, and the Regulations of The Hague Convention No. 4 of 1907.

a fact which gave Germany authority to deal with the occupied countries as though they were part of Germany." The Nuremberg Tribunal expressed the view that it was unnecessary in that case to decide whether such a doctrine of subjugation, dependent as it was upon military conquest, had any application where the subjugation was the result of the crime of aggressive war. The Tribunal said : " The doctrine was never considered to be applicable so long as there was an army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine could not apply to any territories occupied after the 1st September, 1939."(1)

6. VIOLATIONS OF THE RIGHTS OF THE INHABITANTS OF THE OCCUPIED TERRITORY, AND GENOCIDE

In its Judgment the Supreme National Tribunal stated in a summary way that the following groups of crimes had been committed against the Polish population :

(*a*) Illegal creation of an exceptional legal status for the Poles in respect of their rights of property, employment, education, use of their national language, and in respect of the special penal code enforced against them ;

(*b*) Repression, genocidal in character, of the religion of the local population by mass murder and incarceration in concentration camps of Polish priests, including bishops ; by restriction of religious practices to the minimum ; and by destruction of churches, cemeteries and the property of the Church ;

(*c*) Equally genocidal attacks on Polish culture and learning ;

(*d*) Ruthless economic exploitation of the Polish population and of economic resources ;

(*e*) Deportation of the Polish population in implementation of the programme that " not an inch of the conquered territory will belong to a Pole " ;

(*f*) Debasement of the dignity of the nation (degradation of the Poles to citizens of a lower class, *Schutzbefohlene*, in accordance with the distinction drawn between German " masters " and Polish " servants ") ;

(*g*) Crimes committed in places of torture and concentration camps like Fort VII, Zabikow and Inowroclaw and Radogoszcz ;

(*h*) Arbitrary executions and summary sentences by special courts which condemned Poles to death for trivial reasons, or for none at all, and which were practically never mitigated ;

(*i*) Complete extermination of the Jewish population in special camps and crematoria.

While making this general statement and accepting the substance of the corresponding charges put forward in the Indictment, the Tribunal did not enter into questions of law in regard to any of the specific crimes. In

(1) See the Nuremberg Judgment, 1 cit. p. 65. As regards the plea of *nullum crimen sine lege, nulla poena sine lege*, see ibid pp. 38-9 and other publications of the Commission already cited, and particularly Vol. IX of these Reports, pp. 32-9.

appraising the criminal character of the many and various acts involved the Tribunal relied mainly on the documentary evidence submitted to it, which was not available when writing this report. It is therefore not possible to discuss here certain legal aspects in respect of some of the acts contained in the above-described groups of crimes. Although there can be some doubt as to the extent to which some of the specific types of acts alleged in the Indictment could be regarded as clear violations of the laws and customs of war and not justified by military necessity, it can however be said quite generally that the acts for which the accused has been made responsible, were in violation of The Hague Regulations respecting the laws and customs of war (Convention No. 4), namely :

(*a*) that forbidding the occupant to enact new laws and change the law of the land, except in cases of absolute necessity (Article 43) ;

(*b*) that requiring that the honour and rights of families, the life of individual, private property, religious convictions and worship, be respected (Article 46) ;

(*c*) those forbidding confiscation of private property and pillage (Articles 46 and 47) ;

(*d*) that forbidding making the population collectively responsible for the acts of individuals (Article 50) ;

(*e*) that forbidding requisition of civilian labour except for the needs of the army of occupation (Article 52), and in such conditions as would constitute actual degradation and be a means of exterminating them biologically, or by deporting them for the purpose to enemy country ;

(*f*) that forbidding seizure or destruction of historic monuments and works of science and art, and of religious, charitable, scientific and artistic institutions (Article 56).

The Prosecution submitted that most of the offences enumerated in the Indictment were part and parcel of a Nazi plan the aim of which was the biological extermination of whole groups of people. This plan consisted of two phases ; one which aimed at the complete disintegration of the Polish population by destroying its national, social, cultural and economic pattern, as well as personal integrity of individuals ; the other, the imposition of the national pattern of the oppressor. It should be noted that these are exactly the general characteristics of the crime of *genocide* the notion of which has been discussed in some detail in connection with other trials reported in this series.(1)

In its Judgment the Tribunal expressed the opinion that such acts as those referred to above constitute crimes which come within the notion of crimes against humanity, and stated :

> " Gauleiter and Reichstatthalter Artur Greiser, in accepting during September and October, 1939, from the hands of the leader of the great German conspiracy the posts of his deputy in the organisation of Party and State in the so-called Wartheland, did not intend to be merely the

(1) See Vol. VII of this Series, *Trial of Amon Leopold Goeth*, pp. 7-9 ; and *Trial of Rudolf Franz Ferdinand Hoess*, pp. 24-26.

trusted servant of his leader in the ordinary sense. Of the ' Wartheland ' that was carved during the war out of the live body of Poland and annexed in violation of every law, he wished to make a ' German land,' a model ' Mustergau,' and at the same time criminally to turn it into a parade ground (*Excercierplatz*) for trying out methods of germanizing the country, not in the old fashion of the days before the First World War, but in the absolute sense of what he himself called *Eindeutschung*. There were three ways of arriving at such a germanization of the territory which, despite the methods applied during the invasion, and the war that continued to be waged, still had a population of four and a half million, of whom three and a half were Polish : by deportation of adult Poles and Jews, germanization of Polish children racially suited to it, the new method of mass extermination of the Polish and Jewish population, and complete destruction of Polish culture and political thought, in other words by physical and spiritual genocide. The facts concerning this genocide brought to light during the trial and later arranged and evaluated according to the different groups of accusations in section (C) of the Indictment prove that the supreme head of this Wartheland by no means simply blindly carried out the orders of his leader, Hitler, whom allegedly there was no possibility of opposing, but was an independent, ambitious and cunning instigator and organiser of the cruel methods which led to the mass extermination of the local populations with the aim of completely destroying their powers of national resistance and their physical strength, which was the ultimate objective. . . . Thus, the accused as the supreme authority in the Wartheland, acting with full powers granted to him by Hitler, in the opinion of this Tribunal committed crimes both from the point of view of the municipal, and international law. That is, he ordered, countenanced and facilitated, as is shown by the evidence, criminal attempts on the life, health and property of thousands of Polish inhabitants of the ' occupied ' part of Poland in question, and at the same time was concerned in bringing about in that territory the general totalitarian genocidal attack on the rights of the small and medium nations to exist, and to have an identity and culture of their own."

7. THE DEFENCE OF SUPERIOR ORDERS

With this plea of the accused and his counsel the Tribunal dealt in the following statement :

" Throughout the trial the accused consistently put forward one and the same defence which presumably in his opinion excluded, or at least mitigated, his personal responsibility for the unrefutable and grievous crimes committed in the Wartheland while he was its supreme authority. The accused shifted the responsibility for these crimes to third parties, in particular to those higher than he, the ' imperialist ' Hitler and the ' policeman ruler of the Third Reich ' Himmler, neither of whom are now alive. Then with undiminished stubbornness and complete disregard for the evidence, he laid the responsibility for specific cases at the door of yet others, lower in the Party and State hierarchy, on the organs of the S.S. and Gestapo which he alleged were not subordinate to him, and also on those heads of individual administrative depart-

ments (especially on those concerned with nationality policy, education, food supplies, etc.) who allegedly received orders direct from the Ministries in Berlin. Moreover, the accused did not admit responsibility even for the crimes of his undoubted subordinates in the Party or administration (*e.g.*, the heads of departments who signed official pronouncements in the accused's name), since it is possible that in an organisation of between one and two thousand officials, which the accused has compared to the administration of a small state like Denmark or Switzerland, such abuses of discretional authority by a subordinate, can occur. Despite repeated direct questions, by the Prosecution, the accused has not had the moral courage to admit responsibility for any one of the crimes. He himself, the supreme party leader and Reichsstatthalter of the model Wartheland had no knowledge of anything. From the time he went from Danzig to the castle in Poznan he was ' as it were in the golden cage ' of the castle, his car, or his official railway carriage. He knew nothing about either how the Gestapo tortured its victims before killing them in Fort VII, in the Soldier's Home or in Zabikowo ; he had no knowledge of the crematoria for Jews in Chelmno, and for Poles in part of the Poznan University buildings. He knew nothing of the conditions in the Lodz ghetto, never read the proclamations posted in the squares and streets announcing executions that were signed with his name. And, lastly, he had no knowledge of the special methods used then for the utter destruction of Polish culture, faith, science and of Polish books, nor of the brutal extermination of the exponents of that culture, and of its centres and organisation. Of all that the accused, Artur Greiser, knew nothing. He did not even accept responsibility for his own speeches and publications, alleging that they were forced upon him by the central authorities. His plan, as he tried to explain during the trial, was merely the partial germanization of the Wartheland, in order to bring about in this territory conditions more or less as they were before the First World War. . . . Education and teaching deteriorated during the war, in his opinion, mainly owing to the lack of suitable personnel. The abuses were the work of independent units of the Gestapo. He himself was defenceless, when faced with orders from the omnipotent representatives of Himmler. The accused explained during the trial that both in his Danzig post and in Poznan he favoured a reasonable understanding with Poland, the avoidance of war in 1939, and the restoration of the Polish State after the end of the Second World War. . . . All these statements of the accused were in flagrant contradiction to the evidence as a whole, and in the opinion of this Tribunal are not credible.

" Yet, even were the explanations of the accused acceptable as a basis for deciding his case, and if one were to take into consideration not his ' private ' but his ' official ' soul, as he put it, which carried out the orders of his superior, Hitler, even then such a defence would in no way lessen his responsibility for the crimes committed in the above circumstances. According to the modern theory and practice of comparative penal law, it is not necessarily every order of a superior that the subordinate must carry out. In military law, among others that of

Germany, obedience is the fundamental attitude of the soldier. Yet even in this rigorous military law, discipline and obedience are not to be conceived in the sense of a blind obedience . . . to every order, but only to orders that are in accordance with the law, and not those that call upon him to commit crimes. Any such criminal order from a superior will always constitute a particular crime, *delictum sui generis*, for the execution of which the doer will be equally responsible with the issuer of the order. Thus, the accused, according to his own argument, would answer for all criminal manifestations of his ' official ' soul, if he implemented the criminal orders of his *Führer*, as he also would for every manifestation of his criminal superior's ' official soul,' *i.e.*, for every order and instruction issued by him at that time either directly, or indirectly, to his subordinate officials in the party or the administration of the former Wartheland.

" Such responsibility is also in accordance with the proper interpretation of the (Polish) Penal Code, and the corresponding provisions of other modern penal codes, concerning the role of an intellectual offender, *i.e.*, one who incites or prevails upon another person, or a group of persons (associates, subordinates, accomplices, conspirers, etc.) to commit a crime. According to the modern view this is not a question of creating a new kind of collective responsibility for someone else's guilt . . . , nor is it a departure from the fundamental objective view of personal responsibility within the limits of one's own guilt, but a question of taking into consideration the undisputable fact that a large number of modern crimes are committed by larger or smaller groups of criminals, by associations of various kinds with varying degrees of direct complicity (instigators, actual perpetrators, accessories). The various types of public instigation to commit crimes . . . is another specific form of indirect incitement. Thus the accused is responsible not only for all his own orders and instructions, but also for the speeches, lectures, articles and reports made or published by him during the Second World War ' on Hitler's orders ' or under pressure from the ' police-ruler ' Himmler, such as have been laid before the Tribunal.

" That the accused was legally responsible for the criminal orders of his superior and for his own could not deny even his immediate deputy in the administration of the former Wartheland, the witness August Jaeger, lawyer and former civil judge. Evasive and careful as were the replies of this witness, who is possibly himself jointly responsible for a number of official acts committed in criminal co-operation with the accused, he could nevertheless not deny when questioned by the prosecution, that ' in principle ' the accused was responsible for the orders just indicated. What is more, even the accused himself in replying to a question from the Prosecution, said that, if he was to be regarded as an instrument for carrying out criminal orders received from Berlin, he would ' in that sense ' be responsible for those orders. From this it can be concluded that even in the light of his own defence and explanations . . . the plea of the accused cannot be taken into consideration either from the practical point of view, or from the fundamental legal point of view."

It should be mentioned that the Tribunal, in rejecting the plea of superior

orders, based its verdict on Article 4 of the Decree of 31st August, 1944, in its former text, which read as follows:

> " The fact that any of the crimes envisaged in Articles 1 and 2 of the Decree was committed while in service of the enemy authority of occupation or on its orders, or under duress, does not exempt from criminal responsibility."

This provision was later amended and replaced by Article 5 of the new text of the Decree, which now reads (Para. 1):

> " The fact that an act or omission was caused by a threat or order, or arose out of obligation under municipal law, does not exempt from criminal responsibility."

In such cases, however, the Court may mitigate the sentence (Para. 2).

8. THE DEFENCES OF NON-APPLICABILITY OF THE LAW, AND OF ACTS OF STATE

One of the defending Counsel submitted that the Decree of 31st August, 1944, was not applicable to the accused in view of his German nationality, and also because he was himself the personification of the German authorities of occupation, while this Decree provided only for punishment of persons who assisted such authorities in the commission of crimes, *e.g.*, of Polish subjects who in this way committed offences against their own co-nationals. This plea could not, however, be upheld in view of the fact that, according to Article 3, para. 1, of the Polish Criminal Code, the Polish Criminal Law is applicable to all persons, irrespective of their nationality, who committed a crime on the territory of the Polish State.(1) The plea was in fact disregarded by the Tribunal.

Jointly with the above plea, the Defence also submitted that the acts committed by the accused were acts of State for which he could only be responsible before a court of his own State and not of another State, as in the latter event this would be contrary to international law. The Tribunal disregarded this plea and did not express any opinion on this point.(2)

(1) See also Annex to Vol. VII, pp. 84-5.

(2) As to the development in the doctrine of acts of State in international law, see the *History of the Commission*, 1 cit., Chapter X, pp. 262-288. See also Vol. VI of these Reports, pp. 60-1.

CASE No. 75

TRIAL OF ALBERT WAGNER

GENERAL MILITARY GOVERNMENT TRIBUNAL OF THE FRENCH ZONE OF OCCUPATION IN GERMANY

(JUDGMENT DELIVERED ON 29TH NOVEMBER, 1946)

Killing of escaped civilian prisoners—Ill-treatment of individuals used as slave labour.

A. OUTLINE OF PROCEEDINGS

The accused, Albert Wagner, a German guard in a factory at Brebach, in the Sarre, was charged with murdering one Russian worker and ill-treating others who had been deported to Germany as slave labour.

It was shown that in June or July, 1942, Wagner was warned, at about 11 p.m. that a Russian worker was trying to escape. He found him in the yard between the railings of the factory and a wall. After firing two shots in the air he shot the worker dead from a distance of about 20 yards. It was further shown that, while serving as a guard, the accused used to ill-treat the workers by slapping them in the face and kicking them.

The accused pleaded not guilty to the charge of murder, but guilty of unpremeditated homicide and of ill-treatment.

The Court found the defendant guilty of murder and ill-treatment with extenuating circumstances and passed a sentence of 15 years' imprisonment.

B. NOTES ON THE CASE

1. THE COURT AND ITS JURISDICTION

The Court was the General Military Government Tribunal of the French Zone of Occupation in Germany, 2nd Division (chambre), sitting at Rastatt, whose competence is defined in two Ordinances of the French Commander-in-Chief in Germany.(1)

Under Article 1 of the Ordinance No. 20 of 25th November, 1945, French Military Government Tribunals in Germany " are competent to try all war crimes defined by international agreements in force between the occupying Powers whenever the authors of such war crimes, committed after 1st September, 1939, are of enemy nationality or are agents, other than Frenchmen, in the services of the enemy, and whenever such crimes have been committed outside of France or territories which were under the authority of France at the time when the crimes were committed."(2) Article 2 of

(1) For the law in force in the French Zone regarding war crime trials prior to the establishment of Military Government Tribunals, as well as the legal basis of the latter, see Vol. III of this series, Annex II, pp. 100-101.

(2) For crimes committed in French territory the competent courts are Permanent Military Tribunals, sitting in France. On their jurisdiction see Vol. III of this series, Annex II, pp. 93 et seq.

the same Ordinance deals with the penalties which these Tribunals are entitled to impose. It provides that they consist of " all the penalties which such Tribunals are empowered to pronounce, including the death penalty."

Article 1 of Ordinance No. 36 of 25th February, 1946, specifies that the crimes falling within the jurisdiction of the above Tribunals are those covered by Law No. 10 of the Allied Control Council for Germany. It reads :

> " Military Government Tribunals in the French Zone of Occupation in Germany are competent, in virtue of Law No. 10 of the Allied Control Council concerning the punishment of persons responsible for war crimes, crimes against peace and crimes against humanity, to try the crimes set out in that law."

Law No. 10 defines war crimes, crimes against peace and crimes against humanity, and provides that penal liability extends to " any person without regard to nationality or the capacity in which he acted."(1)

It should be observed that the case under review could not have been tried by the French Permanent Military Tribunals which function in France on the basis of the Ordinance of 28th August, 1944, relative to the Suppression of War Crimes, and whose judgments have been recorded in earlier reports. According to Article 1 of the above Ordinance, the jurisdiction of Permanent Military Tribunals applies to crimes committed " since the beginning of hostilities either in France or in territories under the authority of France." On the other hand, it is limited to cases where the victims were alternatively French nationals, persons under French protection, persons serving or having served in the French armed forces, stateless persons resident in French territory before 17th June, 1940, or refugees residing in French territory. In the case tried the crime took place in German territory and the victim was a Russian national, not coming within any of the above categories. The case, therefore, fell entirely within the competence of French Military Government Tribunals, as laid down in Article 1 of Ordinance No. 20 of 25th November, 1945.

2. THE NATURE OF THE OFFENCES

(*a*) *Killing of Escaping Civilian Prisoners*

The accused was found guilty of " murder " of the Russian worker. His plea of " guilty " of homicide, but not of murder, was rejected by the Tribunal in view of the circumstances in which the killing took place. The Tribunal established that, when found by the accused, the victim was cornered, " between a wall and the railings of the factory," and that consequently " he could have been arrested without bloodshed." The fact that the accused fired two warning shots before killing the worker was held not to constitute a defence but was taken into consideration as an extenuating circumstance.

Murder of civilians, prisoners of war or disarmed or wounded combatants in the field of battle is a violation of the laws and customs of war whose criminal nature has acquired undisputed recognition. The lives of civilians are protected under the terms of Article 46 of The Hague Regulations, 1907,

(1) For full text of the relevant provisions see Vol. III of this series, Annex II, pp. 101-102.

and those of prisoners of war and combatants by the provisions of the Geneva Convention of 27th July, 1929. Their killing was treated as a war crime in the list of war crimes of the 1919 Commission on Responsibilities. From the facts of this trial it appears that the victim was a Russian deported to Germany for slave labour and kept there in conditions similar to those of a prisoner. The question as to whether and to what extent detaining authorities are entitled to prevent the escape of prisoners by the use of fire arms, or other means endangering their lives, is an issue in itself. By finding that the Russian worker could have been prevented from escaping without the use of fire arms the Court applied the test of necessity, which is one of the major tests in the case of prisoners of war.(1)

It should be observed, however, that whilst the circumstances of the case, as presented to the court, were sufficient to make the case clearly one of murder whatever the type of victim, the status of the victim was of particular theoretical interest. The latter was not a prisoner of war, and there is no indication that he was a civilian prisoner punished by being used as labour for some specific offence committed against the German occupying authorities in Russia. His case would rather appear to be that of a civilian arbitrarily deported from Russia for the sole purpose of being used as slave labour. The court did not need to, and did not, enter into consideration of this fact, which represents a separate offence. In Article II (*b*) of the Allied Control Council Law No. 10, under whose terms the accused was tried, deportation to slave labour is expressly treated as a war crime, and had the court had to elaborate on the point, it might well have established that the use of the victim as slave labour being a crime in itself, the German authorities were in no case entitled to detain him and consequently to prevent him from escaping by resorting to means endangering his life. In such case the use of fire arms would appear to be entirely illegal, the position of the victim being distinct from that of a lawfully detained civilian prisoner or prisoner of war, where the use of such arms may be recognised as justified in appropriate circumstances.

As a consequence, the main test in this type of case would shift from that of " necessity " to the question of " lawful " or " unlawful " detention, and the principle introduced that the killing of an unlawfully detained prisoner trying to escape, always amounts to a crime, whatever the circumstances. This would, however, leave open the question of the individual responsibility of the perpetrator. A guard, such as the accused, is not likely to be able to distinguish a lawfully from an unlawfully detained prisoner, and in such case may not be expected to judge whether or not he is under the obligation to follow the instructions of his superiors, concerning the escape of prisoners. The degree of his guilt would therefore probably depend on his own *mens rea*, and the punishment would be imposed accordingly.

French Military Government Tribunals in Germany had also the opportunity of considering the use of fire arms in the case of prisoners of war proper. In one of the trials held before them the accused, Paul Korber, a German frontier guard at the German-Swiss borders, was found guilty of

(1) As to the shooting of prisoners of war who attempt to escape, see Vol. I, pp. 86-7, Vol. III, p. 22, and Vol. VII, p. 61.

murdering two of four Italian prisoners of war who were trying to cross the frontier into Switzerland. The event took place at night, which presumably indicated that there could be necessity to use fire arms. On encountering them the accused summoned the four prisoners, but admitted having fired at them at the same time. The court found that there had been no proper warning, and consequently no proper use of arms, but admitted extenuating circumstances. The accused was condemned to 10 years' imprisonment with reprieve for the last 6 years of the punishment.(1)

The killing of the Russian worker by Albert Wagner was punished as a war crime under the terms of Article II (*b*) of the Allied Control Council Law No. 10, and the sentence of 15 years' imprisonment pronounced under Article II, 3, of the same law.

(*b*) *Ill-treatment of Slave Labour*

The accused was also found guilty of ill-treating the Russians used as slave labour in the factory at Brebach. Ill-treatment of civilians and prisoners of war is a clear violation of the laws and customs of war, and therefore a war crime. It is explicitly punishable under the terms of Article II (*b*) of the Allied Control Council Law No. 10, which was applied in the case of Albert Wagner.

(1) Judgment of the General Military Government Tribunal of the French Zone of Occupation in Germany, 2nd Division (chambre) at Restatt, 27th November, 1946.

CASE No. 76

TRIAL OF WASHIO AWOCHI

NETHERLANDS TEMPORARY COURT-MARTIAL AT BATAVIA
(JUDGMENT DELIVERED ON 25TH OCTOBER, 1946)

Enforced prostitution a war crime.

A. OUTLINE OF THE PROCEEDINGS

The accused, Washio Awochi, a Japanese hotel-keeper who ran a club-restaurant in Batavia from 1943 to 1945, was tried for having forced Dutch women to practice prostitution in the premises of the club.

1. THE CHARGE

The accused was charged with having " in time of war and as a subject of a hostile power, namely Japan," and " owner of the Sakura-Club, founded for the use of Japanese civilians," committed " war crimes by, in violation of the laws and customs of war, recruiting women and girls to serve the said civilians or causing them to be recruited for the purpose, and then under the direct or indirect threat of the Kempei (Japanese Military Police) should they wish to leave, forcing them to commit prostitution with the members of the said club," which the women and girls " were not able to leave freely."

The prosecution asked the court to find the accused guilty of " the war crime of enforced prostitution " and to convict him to 15 years' imprisonment.

2. THE EVIDENCE

The court heard as witnesses some 12 women or girls who were forced to prostitution by the accused. According to their testimony, given under oath and corroborated by other evidence, as well as statements made by the accused himself, the facts were as follows :

Awochi was established in Batavia from 1920 and returned to Japan prior to the aggression on Pearl Harbour, on 30th November, 1941. After the occupation of the Dutch East Indies by Japanese forces, he returned to Batavia in June, 1942. He first opened a restaurant called " Akiboro." Later on, in 1943, he rented a block of houses and opened a brothel to which a restaurant and a bar were attached. The place was known as the Sakura Club and was exclusively reserved for Japanese civilians. His assistant in the brothel business was a woman, Lies Beerhorst, with whom he had lived since 1943. With her help, girls were engaged to serve in the restaurant or in the bar as waitresses and then gradually forced to commit acts of prostitution with the customers. In most cases, when accepting to serve in the restaurant or bar, the girls were unaware of the existence of the brothel. In other cases they knew of it, but made specific arrangements

that they would have nothing to do with it. In only a few cases did the girls willingly and knowingly accept the prostitution. Threats with police measures were, in some instances, used at the stage of inducing the girls to become waitresses. In all cases the girls wished to leave the place either when put under pressure to become prostitutes or a certain time after having started this activity. They were not allowed to do so. All were threatened with the Japanese police, that is with imprisonment or deportation, and some were even severely beaten.

Some girls were required to earn a minimum of 450 guilders per evening, and thus to receive at least three visitors. No girl was allowed to receive less than two visitors every night.

In several instances girls who persisted in asking to leave were delivered to the police and deported to other districts.

Among those who were thus forced to prostitution were girls of 12 and 14 years of age.

3. DEFENCE OF THE ACCUSED

The accused admitted having run the brothel with the assistance of his mistress, Lies Beerhorst, but pleaded that he had done so under orders of the Japanese authorities. He also alleged that the whole business was conducted by Lies Beerhorst, and that, although he confirmed every engagement of girls, he personally never used threat, force or trick to recruit the girls or make them remain when they wanted to leave. He confessed to having beaten one of the girls, but contended that this was not in order to force her to prostitution, but for other reasons.

4. THE JUDGMENT

The accused was found guilty of the " war crime of enforced prostitution " and was sentenced to 10 years' imprisonment.

B. NOTES ON THE CASE

1. THE COURT

In the Netherlands East Indies war crimes trials are conducted by courts-martial, that is by military courts. In this case, as well as in some other trials reported in these volumes, the court was a Temporary Court-Martial.

The jurisdiction of courts-martial in the Netherlands East Indies over war crimes derives from the Statute Book Decree No. 46 of 1946 concerning the " Legal Competence in respect of War Crimes." By this Decree amendments were made to the Statute Book Decree No. 173 of 1934 concerning the " Competence of the Military Judge," whereby the latter's jurisdiction was extended so as to cover war crimes. According to Art. 10 of Decree No. 173 of 1934, as amended, punishable acts falling within the competence of the military judge are tried by courts-martial.

The establishment and functions of temporary, as of other, courts-martial are regulated by the Statute Book Decree No. 74 of 1946 concerning the " War Crimes Penal Procedure." Under the terms of Art. 106 of this Decree, temporary courts-martial are appointed, whenever necessary, " in

any territory where a state of siege has been declared." The appointment is made by the commanding officer of the area concerned, and advice is sent to the Governor-General and the Supreme Military Court for the Netherlands East Indies.

In addition to temporary courts-martial, war crimes trials in the Netherlands East Indies may also be conducted by ordinary courts-martial and by field general courts-martial.(1)

2. NATURE OF THE OFFENCE

The accused was found guilty of " enforced prostitution " under the terms of Art. 1, para. 7 of Statute Book Decree No. 44 of 1946 concerning the " Definition of War Crimes." The relevant passages read as follows :

> " Under war crimes are understood acts which constitute a violation of the laws and usages of war committed in time of war by subjects of an enemy power or by foreigners in the service of the enemy, such as :
>
> . . . .
>
> 7. Abduction of girls and women for the purpose of enforced prostitution."

The above paragraph 7 is a reproduction in Netherlands East Indies municipal law of the offence contained, under the same number, in the list of war crimes drawn up by the 1919 Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties. In its judgment the court of Batavia, in fact, and very rightly so, put the accent on " enforced prostitution " in itself, and not on abduction or deportation for that purpose. In the case tried there had been no abduction, and it would have been unjustified to consider that for this reason enforced prostitution was not a punishable act. This was obviously not meant by the drafters of the 1919 list and of those of the above quoted Art. 1.

The manifestations of what is deemed to constitute " enforced " prostitution were considered by the court and summarised in its findings on the offence. With regard to the facts of the case tried, they were described as follows :

Women and girls " intended for prostitution had to take up residence in a part of the club shut off for that purpose and from which they were not free to move."

When they wished to leave the brothel, women and girls " were threatened with the Kempei " (Japanese military police), which threats, in view of the nature of the Japanese police, " were rightly considered as being synonymous with ill-treatment, loss of liberty or worse."

The threats were " of such a serious character " that " the women and girls were forced through them to give themselves to the Japanese visitors of the Sakura Club against their will."

The above descriptions are illustrative of the main elements of " enforced prostitution," which amount to compulsion in all its possible forms.

(1) For more details on the jurisdiction of these courts, see the Annex to Vol. XI of these Reports.

3. PERSONAL GUILT OF THE ACCUSED

With regard to the defendant's plea that all business connected with the brothel was not conducted by him personally, but by Lies Beerhorst, the court was satisfied that " the threats were uttered chiefly by Lies Beerhorst and not by the accused personally," but established at the same time his guilt on the following grounds :

The accused was " leader and head " of the Sakura Club ; Lies Beerhorst " lived with him as his mistress and was a subordinate of his " ; the accused " had great financial interests in the takings of the club." Therefore the court concluded that " it can be established not only that the accused knew of Lies Beerhorst's attitude towards the prostitutes, but even that this attitude was the result of an order given to Lies Beerhorst by the accused." The court referred also to the fact that the girls used on prostitution were Dutch women and found that " in view of where the power lay in this country during the Japanese domination and of the ideas held by the Japanese with regard to the relationship between them and their subordinates, especially if the latter belonged to another race, it may be taken that the accused is directly responsible for the treatment to which the prostitutes were subjected at the Sakura Club."

In imposing punishment the court took into consideration the fact that the girls involved " were mostly in poverty-stricken and difficult circumstances " and that the " accused took advantage " of it for " his own purposes" ; that the accused " drew a very good income " from the club and that the girls " were forced to work very hard in order to make the takings as high as possible."

CASE No. 77

TRIAL OF SUSUKI MOTOSUKE

NETHERLANDS TEMPORARY COURT-MARTIAL AT AMBOINA
(JUDGMENT DELIVERED ON 28TH JANUARY, 1948)

Bearing of victim's nationality upon concept of war crimes—Murder—Violations of the rule of fair trial and other requisite lawful proceedings.

A. OUTLINE OF THE PROCEEDINGS

1. THE CHARGES

The accused, Susuki Motosuke, was a First Lieutenant of the Japanese Army Engineer Corps, posted with the Hosikikan (Japanese Intelligence Service) in the island of Ceram, Netherlands East Indies.

He was charged with having, between August and November, 1944, that is " in time of war, contrary to the laws and customs of war, intentionally, by abuse of the authority he enjoyed over his subordinates . . . incited the latter " to execute Indonesian natives, subjects of the Netherlands East Indies, whilst knowing that the victims " had not been tried, at any rate in a legal manner."

The Court was requested by the prosecution to find the defendant guilty of the war crime of " murder, committed four times " and to sentence him to the death penalty.

2. FACTS AND EVIDENCE

According to the evidence admitted by the Court from the prosecution and collected from other sources, the crimes charged were committed in the following circumstances :

In August, 1944, as officer of the Japanese Intelligence Service, the defendant gave orders to subordinates to execute by shooting a Dutch subject by the name of Barends. During the Japanese occupation of Ceram the latter had joined the ranks of the " Gunkes," a corps of " volunteer combatants," composed mainly of Indonesians serving with the Japanese Army. As a Japanese soldier Barends was found guilty of having shot at a Japanese called Yamamoto, and the defendant ordered a summary execution. The execution was carried out in the presence of the accused, who gave the orders to fire to the execution squad.

In September, 1944, the defendant ordered the arrest of three Indonesians, by the names of Skalwik, Tarumasele and Mailoa, the last two being school teachers. Skalwik was accused of stealing a rifle from the Japanese ; Tarumasele was accused of setting ambushes in the path of retreating Japanese ; and Mailoa was charged with shooting at and robbing Japanese. In October, 1944, the accused gave the orders for their execution and again led the firing squad which killed the three Indonesians.

3. DEFENCE OF THE ACCUSED

While admitting that he gave the orders for the above executions, the accused pleaded not guilty.

Concerning the execution of Barends the defendant referred to the fact that the victim had volunteered to join the Japanese Army and was consequently subject to Japanese military laws and regulations at the time of the execution. The execution was therefore purely an internal matter of the Japanese Army and did not come within the sphere of war crimes. The Court was not competent to try him on this count.

Concerning the killing of the other three victims, the defendant alleged that their execution was lawful as it was made following a sentence of a Japanese Court-Martial (Gunritsu Kaigi), and was ordered by his superior officer, Lieut.-Colonel Hirunoga or Hirunaka.

4. FINDINGS AND SENTENCE

The Court dismissed the accused's pleas. In the case of Barends it decided that there was no war crime but the common law criminal offence of " intentional incitement to murder by abuse of authority," of which the accused was guilty. In respect of the execution of the other three Indonesians it decided that there were no proper trial by Japanese courts and that the accused was guilty of the " war crime of murder."

The accused was sentenced to imprisonment for life.

B. NOTES ON THE CASE

1. THE BEARING OF THE VICTIM'S NATIONALITY UPON WAR CRIMES

One of the most important findings of the Court was that made in the case of the execution of Barends.

The Court was satisfied that Barends had freely joined the Japanese Army in the Netherlands East Indies, and had therefore been in " foreign military service without the permission " of the Dutch Government. As a consequence the Court decided that Barends " was not a Netherlands subject at the time of his execution and therefore no longer a subject of the United Nations." The Court further referred to an official " Explanation of the Legislation drafted with regard to War Crimes," which was released as a supplement to the Netherlands East Indies Decrees and numbered 15031 of 1946. As evidence that war crimes trials were limited to cases involving victims of Allied nationality, the Court observed that, according to the above " Explanation," it was " the intention of the United Nations Commission for the Investigation of War Crimes[1] to undertake the investigation of *war crimes committed against subjects of the United Nations*."[2] As Barends had lost his nationality by joining the ranks of the Japanese Army, the Court took the view that " it could hardly be alleged that the act committed against him was contrary to the laws and customs of war," and that for this reason in his case no war crime had been perpetrated.

(1) This was the original name of the United Nations War Crimes Commission.

(2) Italics inserted.

While discarding the charge of having committed a war crime on account of the victim's national status at the time of the crime, the Court decided that the accused was guilty of a common law crime under the terms of the Netherlands East Indies Penal Code. This decision was reached after consideration of the accused's defence that the execution was a purely internal matter of the Japanese Army, and constituted a lawful act under Japanese laws. The accused referred to two provisions of the Japanese Military Penal Code and claimed that, under Article 62 of the Code Barends had been guilty of insubordination, with the use of arms, in the face of the enemy, which offence was punishable, among other penalties, with death. Under Article 22 of the same Code every commander of a military unit was entitled to acts of summary justice, including the imposition of death penalty, and was not liable to punishment for such acts if they were carried out " in cases of necessity for the maintenance of discipline among army units face to face with the enemy." When giving the orders to execute summarily Barends he, the defendant, had proceeded within these powers.

The Court dismissed this plea on the following grounds :

The accused's unit, to which Barends belonged, had " never once been during the whole war face to face with the enemy," as " no Allied landings ever took place on the island of Ceram in war-time." The accused was therefore not entitled to use the powers given in Article 22 of the Japanese Military Penal Code to army unit commanders. In this connection the application of Article 62 of the same Code was, in the circumstances, " reserved to the judiciary " and could not be carried out by the accused on his own authority.

As a result the accused was found guilty of the common law crime of " intentional incitement to murder by abuse of authority," as provided against in Art. 55, para. 2° of the Netherlands East Indies Penal Code. The relevant passages of this Article read as follows :

> " The following shall be punished as the authors of a punishable act :
>
> . . . .
>
> 2° They who by gifts, promises, *misuse of authority*, or of the esteem in which they are held, by force, threats, or deceit, or by providing the opportunity, means or information, intentionally incite the act."(1)

The Court's finding that, in the case of Barends, there was, technically, no war crime as the victim was no longer, at the time of the crime, a national of one of the United Nations, deserves special attention. The Court referred to the terms of reference of the United Nations War Crimes Commission. From the way this reference was made it is apparent that the Court took into account the War Crimes Commission's terms of reference as they were originally determined in the first stages of its existence. The subject of whether or not the concept of war crimes applied only to victims of Allied nationality, was considered by the United Nations War Crimes Commission as early as 20th October, 1943, the very day of its establishment at the diplomatic conference in London. The majority had taken the view that it

(1) Italics inserted.

was applicable only to such victims. Soon after this, however, in April, 1944, the question was raised again with regard to reported killings of many Italian hostages by the Nazis after the Armistice with Italy was signed, as well as to offences perpetrated by the Nazis against inhabitants of Hungary, Roumania, and other enemy countries. A proposal was made that, in the circumstances, the concept of war crimes should be applied irrespective of the nationality of the victims or of the place of the crime, as such offences were also deserving of punishment.(1) The principle previously adopted was maintained, but the concept of " Allied " nationals was at the same time interpreted in a wider sense so as to meet the situation created by the fact that, after her capitulation, Italy had been accepted by the Allied Governments as a co-belligerent Power and had fought against the Germans with military units of her own. A number of cases concerning Italian victims of Nazi crimes perpetrated after Italy had become a co-belligerent Power, were considered by the Commission and charges against perpetrators put on record in the Commission's files as *prima facie* evidence of " war crimes." After the end of the war British military courts in Italy conducted as " war crime " trials, proceedings against Nazi officers, such as Field Marshal Kesselring, for the killing of Italian victims. In this manner the rule that the concept of war crimes applied only to " Allied " nationals was relaxed so as to include nationals of a " co-belligerent " Power.

In the trial under review the victim had joined the ranks of the enemy of an Allied nation and had thereby, according to Netherlands East Indies law, become assimilated to an enemy national.

2. MURDER AS A WAR CRIME

In the case of the other three victims the Court decided that, in view of their national status, the accused was guilty of the " war crime " of murder.

Murder is one of the offences which have been recognised as a criminal violation of the laws and customs of war ever since these violations were defined. It was included on top of the list of war crimes of the 1919 Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, and was dealt with in the same manner by the United Nations War Crimes Commission in regard to violations committed during the Second World War. In the Netherlands East Indies legislation it is punishable as a war crime under the terms of Article 1 of Statute Book Decree No. 44 of 1946.

In this trial the important point is that the accused's guilt was determined in connection with his plea that the execution was lawful as it allegedly took place in consequence of a sentence passed by a Japanese court after trial of the three victims. The Court heard a Japanese witness who, at the time of the alleged trial, was prosecutor of the Japanese court concerned. He testified that some preparations for a trial were undertaken, but could not remember that the case was actually tried. The Court took this as sufficient evidence that the execution " took place without sentence being passed by any competent judge," and that for this reason it was " contrary to the laws and customs of war " and constituted a " war crime."

(1) See *History of the United Nations War Crimes Commission and the Development of the Laws of War*, H.M. Stationery Office, London 1948, Chapter VIII, pp. 172-174.

3. VIOLATIONS OF THE RULE OF FAIR TRIAL AND OTHER REQUISITE LAWFUL PROCEEDINGS(1)

The Court's decision that the accused was guilty of a common law crime in the case of Barends, and of the " war crime of murder " in respect of the other victims, was reached after consideration of yet another important point.

The Court investigated the question as to whether the victims had in fact been guilty of any offence against the Japanese authorities, as claimed by the defendant. In both cases it decided that they were.

Thus, for example, in the case of Barends the following was stated in the Judgment :

> " The Court . . . deems proved that the accused . . . ordered a number of Indonesians under his command to kill by rifle fire Barends, who was the head of a group of Gunkes and *who had committed a punishable offence.*"(2)

In the case of the other three victims the Court stated :

> " The Court . . . deems proved that the accused . . . ordered a number of Japanese under his command to kill by rifle fire Tarumasele, Mailoa and Skalwik *who had committed punishable offences.*"(2)

These findings are important as they define the true nature of the offences for which the accused was convicted.

In both cases they bring in the foreground the issue of fair trial and of proper exercise of powers vested in members of the authorities of a belligerent State in occupied territory. In both cases the accused's culpability consisted in that, although the victims were guilty of offences and were liable to punishment by the occupying authorities, they were punished in an unlawful manner. It is on account of this lack of lawful proceedings that the executions were criminal, and that the defendant had become guilty of a crime.

The execution of the three Indonesians is a case in point concerning the right of inhabitants of an occupied territory to be tried by an occupation court before being subjected to a penalty. On the other hand, the circumstances of Barends's death are illustrative of cases in which victims are, technically, not nationals of the State whose territory is occupied, but are nonetheless entitled to the same right of being subjected to lawful proceedings before punishment. In this latter case the Court's decision is the more remarkable as it, technically, concerned an " enemy " subject. The accused's conviction on this course is, therefore, evidence of the jurisdiction of an occupied Power over offences committed in its territory, during the occupation, between members of the occupying authorities themselves. In this respect another remarkable feature is that the rule of fair trial or of any other requisite lawful proceedings was considered and implemented from the viewpoint of the law of the occupying Power, and that the defendant was found guilty on the grounds that he had transgressed his powers under the terms of his own country's law.

In this manner the Judgment in this trial goes deeply into the issue of the obligations of an occupying State to exercise its powers within given standards of justice, and is a confirmation of the principle that the latter includes in the first instance the duty to extend the right of fair trial to inhabitants of occupied territory.

(1) On the criminal aspects of the denial of a fair trial see also Vol. V of these Reports, pp. 70-81, and Vol. VI, pp. 96-104.

(2) Italics introduced.

CASE No. 78

TRIAL OF WILHELM GERBSCH

THE SPECIAL COURT IN AMSTERDAM, FIRST CHAMBER
(JUDGMENT DELIVERED ON 28TH APRIL, 1948)

A. OUTLINE OF THE PROCEEDINGS

1. THE CHARGES

The accused, Wilhelm Friedrich Walter Gerbsch, was a guard of the penal camp at Zoeschen, in Germany, during 1944-1945.

The prosecution brought against him a " primary " and an " alternative " charge.

The primary charge was that he carried out " serious ill-treatment, of which Netherlanders, at any rate persons deported or transferred from the Netherlands to Germany " and detained in the camp at Zoeschen were the victims.

The alternative charge was that he committed ill-treatment " as an official in the State or public service of the enemy," and by doing so " intentionally acted contrary to the laws and customs of war, or at any rate of humanity."

Under both charges the accused was prosecuted for offences committed " during the time of the war begun by Germany against the Netherlands on 10th May, 1940, but before 15th May, 1945, making use of the power, opportunity and means offered him by his office and by the enemy and the fact of the enemy occupation of the Netherlands and of the European countries."

2. THE EVIDENCE

A large number of witnesses, all inmates of the camp in which the accused served, were heard, and by their concurrent testimonies the following facts were established :

The inmates of the camp were of different nationalities, including Dutch subjects. The accused used continually and indiscriminately a rubber truncheon with which he beat the inmates. These beatings caused " severe bodily injury," as a result of which the victims " fell down unconscious and in several cases gave no further signs of life." On several occasions the accused used a spade instead of the truncheon, and in many others he savagely flogged the inmates. Because of his cruelty he " was among the most feared guards in the camp." In one case the victim was a Dutchman from Amsterdam, known as " Peters " or " Piet the Amsterdamer." The accused compelled him to push a fully loaded wheelbarrow up and down a slope, during which time he beat the victim without interruption with a rubber truncheon. Peters collapsed several times and every time was beaten until he would get up. He eventually fell unconscious and later died of the ill-treatment. Several other inmates died in the same manner at the accused's hands.

3. THE DEFENCE

The counsel for defence pleaded that the Court had no jurisdiction to try the accused. The reasons given were that the latter was a German, that the offences charged constituted war crimes committed on German territory, and that by committing them the accused acted in the public service of the German state, so that the jurisdiction of the Netherlands court was excluded.

This plea was rejected on the basis of an express provision of Dutch law giving jurisdiction to Dutch courts over offences committed against Dutch subjects or Netherlands interests outside Dutch territory.

4. FINDINGS AND SENTENCE

The accused was found guilty of a crime against humanity in that he " intentionally committed terrorism against Netherlanders and against persons through whom the interest of the Netherlands was or could be harmed." He was also found guilty in the capacity envisaged in the alternative charge, that is as an " official who, during the legitimate exercise of his function, intentionally inflicted on another severe bodily injury which resulted in death, committed several times, making use thereby of the power, opportunity and means offered him by the enemy and the fact of the enemy occupation."

In imposing punishment the Court recognised two mitigating circumstances. It declared that the accused " did not act on his own spontaneous initiative " but " was drawn into the whole abominable system of terrorism and brutality carried out under the higher German Nazi administration against civilians of the occupied nations." On the other hand, the Court established that the accused's " mental faculties were defective and undeveloped " at the time of the crimes as well as at that of the trial.

Gerbsch was condemned to 15 years' imprisonment.(1)

B. NOTES ON THE CASE

1. THE JURISDICTION OF THE COURT

The Court rejected the defence plea concerning its jurisdiction on the basis of Art. 4 of the Extraordinary Penal Law Decree D.61 of 22nd December, 1943. This provision gives jurisdiction to Dutch courts over war crimes or crimes against humanity committed outside the Netherlands against Dutch subjects ; its relevant passages read as follows :

> " . . . The Netherlands penal law applies to any person who outside the realm in Europe is or has been guilty of :
>
> (1) A crime described in . . . Articles 26, 27 and 27A of this Decree. . . . if the act has been committed against or in connection with a Dutch citizen or a Netherlands legal person or if any Netherlands interest is or could be harmed thereby."

Art. 27A makes punishable by Dutch courts those " who during the time of the present war and while in the forces or service of the enemy State are guilty of a war crime or any crime against humanity as defined in Art. 6

(1) Appeal was made against this judgment and, at the time of going to press, the appeal was still not decided.

under (*b*) and (*c*) of the Charter belonging to the London Agreement of 8th August, 1945." When war crimes and crimes against humanity " contain at the same time the elements of an act punishable according to Netherlands Law," the maximum punishment is that provided against that act in Dutch municipal law. If they do not contain the elements of such an act, they are punishable by Dutch courts with the penalty prescribed for the act with which they show " the greatest similarity."(1)

An analysis of the nature of the accused's offences with regard to the above provisions will be found later. The Court decided that the ill-treatment committed by the accused fell within the terms of Art. 27A in conjunction with Art. 4 of the Decree. It defined the issue in respect of Art. 4 by stating that, according to this Article, " the Netherlands judge was accorded jurisdiction with regard to anyone " who had committed offences outside Holland " against or in connection with a Netherlander or if any Netherlands' interest was or could be harmed thereby."

With reference to the defence plea that the Court was not competent on account of the accused's nationality and official position, the Court invoked the principle of the so-called " passive nationality," according to which the jurisdiction of Dutch courts is governed by the nationality of the victims and not of the accused, or by the fact that Dutch national interests, and not those of the accused's country were injured. The court emphasised that this was a principle accepted by many nations as an " internationally recognised legal institution," and that no rule of international law made any exception to it.(2)

Regarding the plea that the accused " acted in the public service of the German State," the Court declared this to be irrelevant as its jurisdiction deriving from Art. 4 of the Extraordinary Penal Law Decree of 22nd December, 1943, was, under the terms of Art. 27A of the same Decree, explicitly accorded in respect of perpetrators " in the service of the enemy State."(3)

2. NATURE OF THE OFFENCES

As stressed in connection with the question of the Court's jurisdiction, the findings were that the accused was guilty under the terms of Art. 27A of the Extraordinary Penal Law Decree of 22nd December, 1943, which is included among the provisions defining the offences committed outside Dutch territory over which Dutch courts have jurisdiction. The acts of ill-treatment were defined by the Court as constituting " crimes against humanity."

Art. 27A of the above Decree makes crimes against humanity punishable by Dutch courts within the terms of the definition of this concept in the Charter of the International Military Tribunal at Nuremberg. Art. 6 (*c*) of the Charter contains the following description of crimes against humanity :

> " . . . Murder, extermination, enslavement, deportation, and *other inhumane acts* committed against any civilian population, before or

(1) For more details on this point see Annex to Vol. XI of this series.

(2) The Court could also have relied upon the principle of the universality of jurisdiction over war crimes. See Vol. I of these Reports, p. 42.

(3) See also Vol. VI, pp. 60-1.

during the war, or persecutions on political, racial or religious grounds . . . whether or not in violation of the domestic law of the country where perpetrated."(1)

Acts of ill-treatment are covered by the terms " other inhumane acts."

The Court gave no reasons why it had established that the accused's acts of ill-treatment constituted crimes against humanity and not war crimes. Art. 6 (*b*) of the Nuremberg Charter defines war crimes as " violations of the laws or customs of war," and explicitly includes the ill-treatment of the civilian population of occupied countries in this concept.

As has been stressed in connection with other trials,(2) the two concepts of war crimes and crimes against humanity may overlap so as to cover at the same time the same criminal act. The concept of crimes against humanity is, however, wider in most senses than that of war crimes, so that there may be more cases in which a war crime constitutes a crime against humanity than the reverse. Certain distinctive features of each concept are to be found in the definitions contained in the Nuremberg Charter. Under Art. 6 (*b*), which concerns war crimes, the emphasis is on offences committed during the war, which is implied in the notion of the " laws or customs of war," and on victims who are " civilian population of or in occupied territory." In Art. 6 (*c*), which concerns crimes against humanity, the emphasis is on offences committed during or before the war,(3) and on victims who are members of " *any* civilian population." This latter element is the most important, as the concept of crimes against humanity was introduced chiefly with a view to punishing offences committed against nationals of the enemy States themselves, such as in the case of German Jews, German Catholics and other Germans victimised on account of their race, religion or political creed.

In the case tried the striking features were that the place of the crimes was in Germany, that the victims of the camp in question were of various nationalities, and that the accused was found guilty of offences against victims including nationals of other countries in addition to those of the Netherlands. This was emphasised by the Court in the following terms :

" The Court is convinced and considers it legally proved that the accused . . . making use of the power, opportunity and means offered him by his office and by the enemy and the fact of the enemy occupation of the Netherlands *and of other European countries*, to wit, employed in German State service as a guard over persons of *various nationalities* . . . which persons had been deported or transferred to Germany . . . applied a system of ill-treatment in the said camp of which *also persons deported or transferred from the Netherlands to Germany* and detained in that camp were the victims."(1)

It will be noted that, when referring to persons deported to Germany from the Netherlands, the Court did not limit its reference to Dutch nationals, which leaves room to believe that nationals of other countries were included.

(1) Italics are inserted.

(2) See *Trial of Josef Altstötter and others*, Vol. VI of this Series, pp. 1-110.

(3) See, however, Vol. IX, pp. 44-8.

The Court's conclusions on the above findings were made on the same lines :

> " The accused . . ., in connection with the war of aggression unleashed by Germany against the Netherlands *and other countries*, . . . intentionally committed terrorism against Netherlanders *and against* persons by the ill-treatment of whom the interest of the Netherlands was or could be harmed."(1)

The reference to the Netherlands interests in connection with persons other than " Netherlanders " is presumably an indication that the court had in mind non-Dutch nationals residing in Holland and transferred to the accused's camp in Germany.

It would thus appear that it is on account of the above circumstances that the Court decided that the accused was, technically, guilty of crimes against humanity and not of war crimes. The main element in this respect would appear to be the conviction of the accused for ill-treating foreign, *i.e.*, non-Dutch citizens in Germany. For, although ill-treatment is a war crime under international law irrespective of the place of the offence, provided the offence is committed against a national or an ally of the State whose courts conduct the trial, the jurisdiction of the Dutch Courts over war crimes is limited to cases affecting Dutch subjects and Dutch interests. It is only when the offences alleged constitute crimes against humanity that cases affecting foreign subjects may fall again within the jurisdiction of Dutch national courts. In such cases the jurisdiction of Dutch or any other national courts is exercised more on the basis of international than national law, and is only instrumental to making the rules of international law effective.

This aspect can best be illustrated in connection with yet another feature of the concept of crimes against humanity. As conceived in Art. 6 (*c*) of the Nuremberg Charter, crimes against humanity do not concern isolated offences. They must have been committed on a wider scale as part of a common pattern repeatedly and systematically carried out, and directed or at least approved by a governmental authority. These features were stressed by some courts on the occasion of trials conducted under Law No. 10 of the Allied Control Council for Germany. Thus, in the case against Josef Altstötter and others, one of the United States Military Tribunals at Nuremberg stated the following with reference to Law No. 10, which gives a definition of crimes against humanity similar to that of the Nuremberg Charter :

> " We hold that crimes against humanity as defined in Control Council Law No. 10 must be strictly construed to exclude isolated cases of atrocities or persecutions whether committed by private individuals or by a governmental authority. As we construe it, that section provides for the punishment of crimes committed against German nationals only where there is proof of conscious participation in systematic governmentally organised or approved procedures, amounting to atrocities and offences of that kind specified in the act and committed against populations or amounting to persecutions on political, racial or religious grounds."(2)

(1) Italics are inserted.

(2) See *Trial of Josef Atstötter and others*, Vol. VI, pp. 1-110 of this Series.

This view concurred with the opinion previously expressed by the United Nations War Crimes Commission. When studying the nature of the concept of crimes against humanity in contradistinction to war crimes, the Commission had reached the following conclusion :

> " Isolated offences do not fall within the notion (of crimes against humanity). As a rule systematic mass action, particularly if it can be shown to be authoritative, will be necessary to transform a common crime, punishable merely under municipal law, into a crime against humanity which thus becomes also the concern of International Law. Only crimes which either by their magnitude and savagery *or* by their great number *or* by the fact that a similar pattern is applied at different times and places, endanger the international community, *or* shock the conscience of mankind, *warrant intervention by States other than that on whose territory the crimes have been committed, or* whose subjects have become their victims."(1)

It will be noticed that both this description and that of the United States Military Tribunal fits the situation of the case tried. The ill-treatment perpetrated by the accused was not an isolated case as it was notoriously applied at different times and places by the Nazis, and was part of their general criminal policy. It also undoubtedly " shocked the conscience of mankind " as part of that pattern, and therefore clearly warranted the " intervention " of the Dutch court in the case implicating victims other than Dutch subjects. The fact that the accused's acts formed part of a pattern, authoritatively directed, was stressed by the Court in its decision regarding the mitigating circumstances in the case. It will be remembered that one of these circumstances was that the accused " was drawn into the whole abominable system of terrorism and brutality carried out under the higher German Nazi administration."

Finally, it should be observed, with regard to the rule according to which penalties for crimes against humanity are those provided by Netherlands municipal law for identical or similar acts, that the Court's finding was that the offences committed by the accused were punishable under Arts. 300-304 of the Dutch Penal Code, which deal with acts of physical ill-treatment (blows, bodily injury, and the like).

3. GUILT OF THE ACCUSED

The accused was found guilty of the offences described in the primary charge in the circumstances emphasised in the alternative charge, that is, he was found guilty of ill-treatment " as an official in the State service of the enemy " who made use of " the power, opportunity and means offered him by his office."

The responsibility of officials of the State is defined in Art. 21 of the Extraordinary Penal Law Decree of 22nd December, 1943. This Article deals with " every officer, official or any other person, whether serving in a permanent or temporary capacity, employed by the civil or military administration of a hostile power." The effect of Art. 21 is that such officials are

(1) Italics are introduced.

subject to the rule of Art. 44 of the Dutch Penal Code, which reads as follows :

> " If an official by committing a punishable offence violates a particular duty, or in committing a punishable offence makes use of the power, opportunity or means given him by his office, the punishment may be increased by one third."

The increased punishment, which is not mandatory but only optional, was presumably not applied by the Court in the case of the accused on account of the two mitigating circumstances previously mentioned. One was that the accused did not act " on his own spontaneous initiative " but was the instrument of the Nazi system of terror. The second circumstance was that the accused's mental faculties were " defective and undeveloped." This apparently removed the grounds for implementing the punishment of Art. 21, although the accused fell within the categories of individuals covered by it.

CASE No. 79

TRIAL OF SHIGEKI MOTOMURA AND 15 OTHERS

NETHERLANDS TEMPORARY COURT-MARTIAL AT MACASSAR
(JUDGMENT DELIVERED 18TH JULY, 1947)

Responsibility of Criminal Groups—Unlawful Mass Arrests—Systematic Terrorism.

A. OUTLINE OF THE PROCEEDINGS

1. THE ACCUSED

The defendants were members of the Tokkeitai, Special Japanese naval police, in Macassar, Netherlands East Indies, during the time of the Japanese occupation.

The first defendant, Shigeki Motomura, was, from November, 1943, until August, 1945, second-in-command of the Tokkeitai and held the rank of Sub-Lieutenant of the Japanese Navy. He was in charge of the Tokkeitai in South-West Celebes. The other 15 accused were non-commissioned officers and other ranks of the Japanese Navy, and also served in the Tokkeitai at Macassar, in various capacities. Their names are as follows : Chobei Sakai, Warrant officer ; Toshimitsu Tomita, Petty-officer ; Tooru Minami, Warrant officer ; Shigeo Manabe, Warrant officer ; Susumu Nakashima, Chief Petty-officer ; Toshio Ono, Warrant officer ; Toshihiro Shiba, Warrant officer ; Tokyo Eguchi, Warrant officer ; Isamu Shimitzu, Petty-officer ; Tametsu Masuda, Chief Petty-officer ; Masashige Oku, Chief Petty-officer ; Shoichi Terayama, Chief Petty-officer ; Noboru Doi, Interpreter ; Fusso Nakata, Able seaman 1st class, chauffeur ; Shigeichi Seno, Chief Petty-officer.

2. THE CHARGES

The defendants were prosecuted and tried as members of a criminal group which had committed offences as a single unit. The offences charged were unlawful mass arrests and systematic terrorism consisting in torture and ill-treatment of subjects of the Netherlands East Indies.

The relevant passage from the prosecutor's indictment reads as follows :

> " In the period from March, 1942, to August, 1945, therefore in time of war, the Special Japanese Police Organisation in Macassar, called the Tokkeitai, of which the accused, subjects of the enemy power Japan, formed part as second-in-command and members respectively, the Tokkeitai being therefore a group in the sense of Art. 10 of the Statute Book 1946 No. 45, committed war crimes within the framework of its activities, the said unit having by means of its members, contrary to the laws and customs of war, carried out unlawful mass arrests and/or exercised systematic terrorism against persons suspected by the Japanese of punishable acts and, therefore, for that or other reasons, arrested, this systematic terrorism taking the form of repeated, regular and lengthy torture and/or ill-treatment, the seizing of men and women on the

grounds of wild rumours, repeatedly striking them with the hand and with sticks during their interrogation, kicking them with the shod foot, hanging them up by the arm or leg, burning them with glowing cigarettes and bicycle bells, wrenching their knee-joints apart, stripping women and exposing them in this condition to the public view, withholding food from arrestees, compelling them to put their thumb print on blank sheets of paper, or one or more of the aforesaid acts, or else ordered, encouraged or allowed them to be committed knowing that one or more of the said acts were being committed by those under them, the aforesaid acts having led or at least contributed to the death, severe physical and mental suffering of many and the condemning to death or imprisonment of several innocent persons."

The first defendant, Motomura, was held responsible on account of his position of commanding officer and was prosecuted for having " ordered, encouraged or allowed " the commission of some of the above crimes. So was the second accused, Sakai, who was the senior petty officer of the Tokkeitai and the first accused's deputy. Both were also charged with committing certain crimes personally. The other accused were prosecuted as perpetrators, some of them also as instigators of one or more of the crimes charged.

The prosecution asked the court to find the accused guilty of " carrying out unlawful mass arrests " and of " systematic terrorism " and requested penalties ranging from 1 year's imprisonment to the death penalty.

3. FACTS AND EVIDENCE

The particulars and evidence submitted by the prosecution were, after investigation before the court, admitted as establishing the cases against every defendant.

It was established that Motomura had ordered, encouraged or allowed the arrest, among others, of a large group of local inhabitants in November, 1944, and of two other large groups in January, 1945. It was also established that, in January, 1945, he had " seriously ill-treated " 3 American airmen, and had " ordered that all food be withheld for four days " from another prisoner.

His assistant, Sakai, was found to have taken part in the above crimes as an accomplice in " ordering, encouraging or allowing " their commission. It was also shown that in March and July, 1943, he seriously ill-treated several prisoners. For the other accused, it was shown that they all, at one time or another, seriously ill-treated persons detailed by the Tokkeitai. The defendant Minami was, in addition, found to have acted as head of a detachment of the Tokkeitai in a particular area, and to have, as such, also ordered, encouraged or allowed some of his subordinates to commit crimes. In addition, he raped a Dutch woman. Another accused, Ono, also headed a detachment and gave orders. The defendant Masuda repeatedly raped and ill-treated the same Dutch woman as Minami.

4. DEFENCE OF THE ACCUSED

The chief defendant, Motomura, made a partial admission of guilt. He considered himself responsible for the deeds of his subordinates and also

for those of his deputy, the second accused, Sakai. He denied, however, responsibility for acts of his subordinates in those places to which they were detached. He explained that, according to regulations, a confession had to be secured before a case could be sent to a Japanese court-martial. During his time of office there never were denials, but all confessed of their own accord. He himself had never seen a beating being done by his subordinates, but believed that this took place. His duty was to select investigators and once appointed, these had independent power of arrest. His deputy, Sakai, had the same duties and performed them very often in his place. The accused admitted having carried out the mass arrests in January and July, 1945, but invoked the plea of superior orders. The arrests were made upon the orders of a senior staff officer, Toyama. He pleaded not guilty to the charges of ill-treating American airmen and withholding the food of prisoners.

The second accused, Sakai, took a similar line of defence, but made admissions which contradicted essential parts of Motomura's defence. He pleaded guilty to the charge of conducting and supervising mass arrests, but limited the plea to the time when Motomura was absent. He also admitted that confessions from arrestees were extorted by ill-treatment and torture. Confessions, he claimed, had to be forced, for otherwise they would have practically never taken place and cases could not be transmitted to courts-martial. Arrestees were also tortured to this end, but he, the defendant, had strongly disapproved of it. Physical ill-treatment was never instructed from above but was entirely the inventions of those conducting the interrogations. He pleaded not guilty to the other charges, namely that he had personally ill-treated arrestees.

The other accused pleaded not guilty to all charges, denying that they perpetrated any of the crimes for which they were prosecuted.

5. FINDINGS AND SENTENCES

One of the defendants, Toshio, died during the trial and the proceedings against him were declared terminated. As a consequence no findings as to his guilt were made and sentences imposed.

Another defendant, Terayama, was found not guilty and acquitted.

All the other accused were found guilty in different degrees of the " carrying out of unlawful mass arrests " and of " systematic terrorism practiced against civilians." They were convicted to various punishments. Motomura, Sakai and 7 other defendants were sentenced to death. Two accused were sentenced to 20 years' imprisonment each, one to 15 years, one to 5 years, and the last to 1 year's imprisonment.

B. NOTES ON THE CASE

1. CRIMINAL GROUPS

As previously stressed, the defendants were tried not as individuals, but as members of a group charged as a whole with the commission of specific crimes. This circumstance was stressed by the prosecution in the part of the indictment previously quoted under heading A. 2 and was confirmed by

the court in its Judgment. The latter acknowledged that the indictment was " not concerned with the accused as individuals but as a group," and based its verdict on the finding that " with regard to the Tokkeitai taken as a group, legal and convincing evidence has been produced at the sitting that it was guilty " of the crimes charged.

Penal responsibility of groups of persons is regulated by Art. 10 of the Netherlands East Indies (N.E.I.) Statute Book Decree No. 45 of 1946, known as the " War Crimes Penal Law Decree," to which the court made reference. This Article provides the following :

> " 1. If a war crime is committed within the framework of the activities of a group of persons in such a way that the crime can be ascribed to that group as a whole, the crime shall be considered to have been committed by that group and criminal proceedings taken against and sentence passed on all members of that group.
>
> " 2. No penalty shall be imposed on him of whom it is proved that he had taken no part in the war crime."

This provision covers ground similar to that regulated by Arts. 9 and 10 of the Charter of the International Military Tribunal at Nuremberg. According to these Articles the International Military Tribunal was empowered to declare criminal any given group of which any defendants appearing before it was a member. The effect of such a declaration was that any other member of the group was liable to prosecution before other courts for the crime of " membership ", and that in such trials the criminal nature of the group so declared by the International Military Tribunal was considered proved and could not be questioned. This did not, however, prejudice the issue of the personal guilt of the members prosecuted, which was made subject to rules preventing the conviction of innocent members.(1)

The N.E.I. provisions do not deal with declarations of criminality of a group which, under the terms of the Nuremberg Charter, were to precede trials of individual members ; neither do they restrict those trials to members of groups previously declared criminal. In the case of the Nuremberg Tribunal such a method was justified for several reasons. The individual defendants tried by it belonged to comparatively few and well defined organisations, so that there was no need to allow room for the subsequent prosecution of any other group or organisation. On the other hand, the evidence produced against the individual defendants who occupied the highest positions in the groups involved, threw at the same time light upon the question of whether or not these groups were criminal. The International Military Tribunal was, therefore, in the best position to answer the question one way or the other. In view, however, of the large number of individual members implicated, running into scores of thousands of persons, the Nuremberg Tribunal could not be expected to conduct all the trials which could take place as a result of its findings in this sphere. It was instituted only for the trial of major war criminals of the European Axis, and was, therefore, to deal solely with leading Axis criminals. For all these reasons, the method of splitting the proceedings into two different parts, one con-

(1) For details of these points, see pp. 42 *et seq.* above, and also *History of the U.N.W.C.C. and the Development of the Laws of War*, London, H.M.S.O., 1948, Chapter XI, in particular pp. 303-308 and 310-313.

sisting in declaring a group criminal and the other of entrusting other courts to conduct the trial of individual members on the basis of such declarations, was both the best indicated and the most expedient.

These reasons did not exist in the case of Dutch national courts and it was therefore unnecessary for the Dutch legislation to prescribe previous declarations of criminality or to circumscribe the effect of the latter to trials of members of any particular group. In this respect the N.E.I. legislation follows the same pattern as the war crimes laws of certain other countries, such as Great Britain, Canada, Australia or the United States.(1) Their common feature is that any member of a group of persons may be prosecuted as soon as it is established that one or more war crimes were committed as a result of concerted action on the part of the group. Once this essential element of collective criminality is established, the law of these countries provides that the evidence concerning a crime which is produced against one member of the group, may be received as *prima facie* evidence of the guilt of all other members. This could be implied in Art. 10 of the N.E.I. Decree No. 45 of 1946, as it prescribes that whenever a crime " can be ascribed to the group as a whole," the crime " is considered to have been committed by that group," which would appear or could be interpreted so as to mean any or all of its members. In the law of some countries there is even the rule according to which in such cases the burden of proof regarding the actual guilt of any member for the specific crimes charged, is reversed and a presumption of guilt created against the accused. The consequence is that, in order to escape punishment, it is up to the defendant to prove his innocence.(2) This issue is not clearly answered in Art. 10 of Decree No. 45. It provides that the accused of whom " it is proved that he had taken no part in the crime " shall not be punished, and thus leaves open the question as to whether this has to be derived from the evidence to be submitted by the prosecution, or has to be established by the accused himself. The N.E.I. courts are therefore in a position to apply the rule which they find to be most appropriate, at their discretion.

It should be emphasised that in spite of the rule making possible convictions on the grounds of the evidence proving the crimes committed by the group as a whole and relating to the guilt of only one or a few more members, in this trial both the prosecution and the court were eager to establish the individual guilt of every member of the Tokkeitai. This would have provided a sufficient basis for their conviction irrespective of whether they were guilty as members of a criminal group. In the implementation of the above Art. 10, it was fully shown that none of the defendants convicted as members of the Tokkeitai were innocent.

2. NATURE OF THE OFFENCES

(a) Unlawful mass arrests

The first count upon which the defendants were found guilty as members of the Tokkeitai, was " unlawful mass arrests." This offence is provided

(1) For the law of these countries, see the respective Annexes published in Vol. I of this Series, pp. 108-9, Vol. III, pp. 103-20, in particular p. 111, Vol. IV, pp. 128-129, and Vol. V, p. 100.

(2) On the issue of the burden of proof, see *History of the United Nations War Crimes Commission and the Development of the Laws of War*, London, H.M.S.O., 1948, pp. 307-308, 312-313, 322-332 ; also the trials reviewed in pp. 332-343.

against in Art. 1 of the N.E.I. Statute Book Decree No. 44 of 1946, which gives a definition of war crimes as punishable by the N.E.I. courts. Its relevant passages read as follows :

> " Under war crimes are understood acts which constitute a violation of the laws and usages of war committed in time of war by subjects of an enemy power or by foreigners in the service of the enemy, such as :
>
> . . . . .
>
> 34. Indiscriminate mass arrests for the purpose of terrorising the population, whether described as taking of hostages or not."

This specific offence forms part of a comprehensive list of war crimes which were enumerated in the above Article according to the list drawn up in 1919 by the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties. The original 1919 list consisted of 32 offences, but in 1944 it was amplified by the United Nations War Crimes Commission. The making of mass arrests was one of the two offences added on this occasion.(1)

It should be noted that among war crimes comprised by the 1919 list and adopted in Art. 1 of the above Decree, figures " systematic terrorism " which, in the above description of " indiscriminate mass arrests " is indirectly referred to by the words " for the purpose of terrorising the population." In this connection " indiscriminate mass arrests " appear to constitute a particular form of systematic terrorism. However, when it was added to the 1919 list by the United Nations War Crimes Commission it was thought more advisable to specify the issue under a separate denominator than to leave it to uncertain and differing jurisprudence. By adopting it within the terms of its municipal law, the N.E.I. legislator has followed the same course, although the court as will now be seen took notice of the link.

When considering the criminal nature of unlawful mass arrests the court defined it as follows :

> " Unlawful mass arrests are to be understood as arrests of groups of persons firstly on the ground of wild rumours and suppositions, and secondly without definite facts and indications being present with regard to each person which would justify his arrest."

And it added the following :

> " The aforesaid mass arrests already contained the elements of systematic terrorism for nobody, even the most innocent, was any longer certain of his liberty, and a person once arrested, even if absolutely innocent, could no longer be sure of health and life."

Other manifestations of systematic terrorism taken in itself were defined in connection with the second count.

(b) Torture and Ill-treatment

Physical ill-treatment of civilians is provided against in several items enumerated by Art. 1 of Decree No. 44. It appears as item 4 of the list

(1) The second offence added by the United Nations War Crimes Commission concerns " acts violating family honour and rights, the lives of individuals, religious convictions and liberty of worship, as provided for in Art. 46 of The Hague Regulations " of 1907. See on these additions, *History of the United Nations War Crimes Commission and the Development of the Laws of War*, London, H.M.S.O., 1948, pp. 170-172.

included in its definition of war crimes,(1) where it is described as "torture of civilians." It is also covered, in a wider sense, by item 9, "internment of civilians under inhuman conditions," as imprisonment may conveniently be regarded as a particular form of "internment." It is, however, specifically covered by item 35, which was added by the N.E.I. legislator himself, as "ill-treatment of interned civilians or prisoners." This covers any ill-treatment which does not constitute torture.

The court decided that the torture and ill-treatment to which the victims were subjected were only particular forms of "systematic terrorism" as covered by Art. 1 of Decree No. 44. It defined this issue in the following terms :

> "Terrorism as reflected in the charge is to be considered as systematic, as the ill-treatment and tortures were not only similar as regards the various accused, but were also similar to those applied everywhere by the members of the Kempeitai,(2) a single object being sought, namely the forcing of a confession. . . . In order to obtain this confession in the quickest and easiest manner the lines of least resistance were followed, namely . . . psychological and physical compulsion paralysing the resistance of the persons under interrogation . . . who were entirely innocent. . . ."

3. DEGREE OF GUILT OF THE ACCUSED

The court took into special consideration the degree of guilt of the chief defendant, Motomura. It admitted that, in regard to mass arrests, he acted under general instructions of his superior officers, but found at the same time that the accused was to be "considered responsible, not for carrying out the order, which as a subordinate he could not refuse to do, but for the fact that the execution of the order took the form of mass arrests . . . and that methods of interrogation such as mentioned above were used thereby." In this connection it was found that Motomura bore "the greatest measure of responsibility for everything standing to the debit of the Tokkeitai in the matter," as he "allocated the duties, gave orders for the duty tours, and detachments took place entirely according to his submission." In addition to this the defendant was found guilty as personal perpetrator of the acts of ill-treatment charged.

The Court's finding concerning the duty of the accused to follow his superiors' orders deserves special attention. It should be interpreted in context with the finding next to it, that, although "as a subordinate" the accused "could not refuse" to obey the orders, he was nevertheless guilty because, by executing them, he committed criminal offences. This finding reflects the principle governing the plea of superior orders and defining its boundaries in the legislation of most countries. According to it, no subordinate may be successful with this plea if the orders were clearly criminal in themselves.(3) This implies that a subordinate is expected to refuse to obey orders which are of a clearly criminal nature. In Motomura's case, it seems that the above-mentioned finding concerning his duty to obey

(1) For full contents of this list see Annex to Vol. XI of this series, pp. 93-95.

(2) The Kempeitai was the Japanese Military Police Corps of which, in view of this reference, the Tokkeitai was presumably a branch.

(3) See Vol. V of these Reports, p. 14.

orders referred to general instructions to undertake police measures against suspects, which apparently did not carry with them the necessity for mass arrests and ill-treatment which actually took place under Motomura's personal command. It is probable that the Court's finding was limited to this particular situation, and did not imply a recognition of the duty to obey any orders under any circumstances.

The degree of guilt of the second accused, Sakai, was described to " follow directly " that of his superior, as he was Motomura's deputy, performed the same kind of duties and bore the same type of responsibility.

Both were convicted to death on the above-mentioned grounds.

The other accused convicted were sentenced according to the gravity of the crimes which they had respectively perpetrated, and according to the part they had taken in their mutual criminal relationship.

CASE No. 80

TRIAL OF HEINZ HAGENDORF

UNITED STATES INTERMEDIATE MILITARY GOVERNMENT COURT
AT DACHAU, GERMANY, 8TH-9TH AUGUST, 1946

Improper Use of Red Cross Insignia.

A. OUTLINE OF THE PROCEEDINGS

1. THE CHARGE

The accused, Heinz Hagendorf, a German soldier, was tried by a United States Intermediate Military Government Court at Dachau, Germany,(1) being charged with having " wrongfully used the Red Cross emblem in a combat zone by firing a weapon at American soldiers from an enemy ambulance displaying such emblem."

2. THE EVIDENCE

The evidence before the court showed the following :

On 15th January, 1945, at about 2 p.m., an American unit, the 3rd Platoon, Company " G," 329th Infantry, was located in the little hamlet of Henyelez, in Belgium. A German ambulance, bearing Red Cross insignia, approached the road intersection at a high speed. It was first noticed by an American captain, by the name of Bates. The vehicle passed Captain Bates rapidly, and shots were fired from it through windows and doors. It then continued through the village and was next seen by two American privates. Here again shots were fired from the ambulance at the two soldiers. The latter took cover in nearby houses, while a third U.S. private hit the ambulance with a shot from a bazooka. The vehicle stopped and two German soldiers got out of it and began to run toward one of the houses. Both were fired upon by American soldiers. One was killed, and the other, accused Hagendorf, was captured.

It was established that the ambulance was driven by the German killed, and that the accused was the sole passenger. The accused pleaded not guilty, alleging that he had not fired any shots from the ambulance, but that it was the latter that received fire from the Americans.

3. FINDINGS AND SENTENCE

The defence plea was rejected on the grounds of the evidence proving the facts as stated above. The accused was found guilty of the charge and sentenced to 6 months' imprisonment.

B. NATURE OF THE OFFENCE

Liability for improper use of Red Cross insignia is covered by an express provision of The Hague Regulations respecting the Laws and Customs of

(1) For the origin and jurisdiction of United States Intermediate Military Government courts see Vol. III of this series, pp. 113-20. The full transcripts of this trial and of the trial of Erich Weiss and Wilhelm Mundo, reported below, are not available to the United Nations War Crimes Commission. Reports of both trials are based on war crime trial summaries received from the United States authorities.

War on Land, appended to the IVth Hague Convention of 1907. Article 23 (*f*) of The Hague Regulations provides that " it is particularly forbidden" to " make improper use of a flag of truce, of the national flag, or of the military insignia, and uniform of the enemy, as well as of the *distinctive signs of the Geneva Convention.*" The latter is a reference to the Convention for the Amelioration of the Conditions of Soldiers wounded in Armies in the Field of 1864, revised in 1906 and more recently in 1929.(1)

Under the terms of the above Geneva Convention, " mobile medical formations which are intended to accompany armies in the field " are to be " respected and protected by the belligerents " (Article 6 of the 1929 Convention). The same applies to hospitals or any other " fixed establishment of the medical service of the armed forces." According to Article 7 of the 1929 Convention vehicles equipped for the evacuation of wounded and sick persons, such as ambulances, are treated as mobile medical formations.

In order to facilitate the protection of vehicles, establishments, personnel and material of the medical service from the hazards of warfare, provision was made for the display or wearing of the Red Cross sign and rules were laid down as to those entitled to use it. The effect of these rules is that no person wearing the Red Cross sign may be treated as a combatant, or his equipment taken as a military objective or target.

The above-mentioned protection was, however, made subject to a general condition. According to Article 7 of the 1929 Convention, the protection ceases to exist if medical formations or establishments " are made use of to commit acts harmful to the enemy." This comprises the general prohibition for the medical personnel to use arms or serve as combatants. According to Article 8 the use of arms by medical personnel is permitted only in one exceptional type of case : if they have used arms in their own defence or in that of the sick and wounded in their charge. The following additional exceptional cases equally do not deprive medical personnel from the protection concerned :

(*a*) If in the absence of armed orderlies, the formation or establishment is protected by a piquet or by sentries ;

(*b*) If small arms and ammunition taken from the wounded and sick, which were not yet transferred to the proper service, are found in the formation or establishment ;

(*c*) If personnel and material of the veterinary service are found in the formation or establishment without forming an integral part of the same.

In the case tried it was the rule concerning the use of arms in self-defence which was implicated. In his plea the accused had contended that his ambulance had been machine-gunned by the Americans while driving in order to collect wounded Germans at Henyelez. The accused had denied having answered the fire even in self-defence. When considering the accused's allegations the court established, among other facts, that the evidence was clearly that shots were fired from the German ambulance at

(1) Germany ratified the 1929 Convention on 21st February, 1934, and the United States on 4th February, 1932. Consequently, in the trial reviewed here, it was the text of the 1929 Convention which was relevant.

American military personnel. In face of the same evidence the court at the same time rejected as untrue the allegation that, prior to that, the ambulance had been fired upon by the Americans. This was apparently done as a result of inconsistencies in the accused's defence. He had contended that he was in the back of the ambulance at the time of the alleged crime, and that the vehicle was of a right-hand drive type. This, in view of the position of the vehicle on the spot of the incident, was meant to show that the accused could not have fired the shots charged. This allegation was disproved by photographic evidence taken immediately after the accused's capture, which showed that the vehicle was of a left-hand drive type, and that, by admitting that he was not driving, as was corroborated by the evidence, the accused must have sat on the side from which the shots were fired, that is, the right-hand side.

It was in this manner that the possibility of the use of arms in self-defence was discarded by the court, and the improper use of arms by the accused under the shield of the Red Cross insignia ascertained.

As previously stressed, misuse of the Red Cross emblem is a specific violation of the terms of The Hague and Geneva Conventions. It is hard to conceive of a more flagrant misuse than the firing of a weapon from an ambulance by personnel who were themselves protected by such emblems and by the Conventions, in the absence of an attack upon them. This constituted unlawful belligerency, and a criminal course of action.

It should be observed that not *every* violation of the Conventions concerning the use of the Red Cross insignia would of necessity constitute a punishable act. The need for maintaining a distinction between mere violations of rules of warfare, on the one hand, and war crimes on the other,—the latter being the only ones to entail penal responsibility and sanctions—is urged by authoritative writers, such as Professor Lauterpacht.(1) In the opinion of the learned author war crimes are violations of the laws of war as are criminal in the ordinary and accepted sense of fundamental rules of warfare and of general principles of criminal law by reason of their heinousness, their brutality, their ruthless disregard of the sanctity of human life and personality, or their wanton interference with rights of property unrelated to reasonably conceived requirements of military necessity.(2) Violations not falling within this description would remain outside the sphere of war crimes and consequently of acts liable to penal proceedings.

The Court's findings in the trial under review were limited to the specific case of unlawful use of arms under the cover of the Red Cross emblem. It would therefore be unjustified and at any rate premature to conclude from the Court's implementation of the Geneva Convention, that any other violation of the latter's rules is of necessity a war crime.

(1) H. Lauterpacht, *The Law of Nations and the Punishment of War Crimes*, British Year Book of International Law, 1944, pp. 77-78.

(2) Op. cit., p. 78.

CASE No. 81

TRIAL OF ERICH WEISS AND WILHELM MUNDO

UNITED STATES GENERAL MILITARY GOVERNMENT COURT
AT LUDWIGSBURG, GERMANY, 9TH-10TH NOVEMBER, 1945

Self defence as an exonerating circumstance of guilt for war crimes.

A. OUTLINE OF THE PROCEEDINGS

1. THE CHARGE

The accused, Erich Weiss and Wilhelm Mundo, were members of the German police forces in the area of Aken on the Elbe, Germany. They were tried by the United States General Military Government Court at Ludwigsburg, Germany.

Both accused were charged with " wrongfully killing an unknown American airman " who parachuted from a disabled aircraft near Aken, on or about 30th May, 1944, and " who was a prisoner of war of the then German Reich."

2. THE EVIDENCE

The evidence before the Court showed that, at about 11 a.m. on or about 30th May, 1944, an unknown American airman safely parachuted from his military aircraft over Germany, near Aken on the Elbe. He was captured by a Wilhelm Weitch, to whom he had surrendered, and was turned over to the accused Erich Weiss, an auxiliary policeman. The prisoner was wounded in the right arm. Weiss took the prisoner toward Aken and, on the edge of the town met the accused Wilhelm Mundo, a policeman. A crowd gathered around them and soon demanded that the prisoner be killed. An air raid was still going on.

At this point the prisoner suddenly moved his right hand in his pocket. Weiss fired a shot, and, as the prisoner was falling down, Mundo fired a second shot. The prisoner was instantly killed.

3. THE PLEA OF SELF-DEFENCE

Both accused pleaded not guilty on the grounds that they felt threatened by the victim's move in his pocket and fired in self-defence. According to their statements, Weiss was facing the prisoner and Mundo was facing the crowd, with his back to Weiss and the prisoner. When the prisoner moved his right hand in the pocket, Weiss believed he was reaching for a weapon and fired the first shot. Mundo, hearing the shot behind him, felt threatened, turned and fired the second shot. No evidence was produced that the victim had been searched for hidden arms when captured.

4. FINDING OF THE COURT

It appears that the Court gave credit to the accused's defence concerning the circumstances of the killing and found the accused not guilty on the grounds of self-defence. Both accused were consequently acquitted.

B. RELEVANCE OF THE PLEA OF SELF-DEFENCE IN WAR CRIME TRIALS

The finding of the Court is evidence that self-defence which, according to general principles of penal law is an exonerating circumstance in the field of common penal law offences when properly established, is also relevant, on similar grounds, in the sphere of war crimes.

The accused, as guards of a prisoner of war were under the duty to accord the prisoner proper treatment, even protection if necessary. Conversely, as guards they would be authorised to use force, but only such force as was reasonably necessary under all the circumstances either to secure the custody of the prisoner or to protect themselves from an attack by their prisoner. The Court would seem to have felt that considering all the surrounding circumstances, for instance, the air raid, the hostile crowd, the sudden motion of the captive in reaching in his pocket, such circumstances did in fact constitute a sufficient threat to justify the shooting.

In the light of the foregoing the rules contained in Articles 2 and 3 of the Geneva Convention, 1929, would appear to be subject to the principle that, given faithful observation of these provisions by the detaining authorities, the latter are generally entitled to use the force reasonably necessary to secure the custody of the prisoners or to protect themselves from an attack by the prisoners.

CASE No. 82

TRIAL OF MAX SCHMID

UNITED STATES GENERAL MILITARY GOVERNMENT COURT
AT DACHAU, GERMANY, 19TH MAY, 1947

A. OUTLINE OF THE PROCEEDINGS

1. THE CHARGES

The accused was charged with two murders of prisoners of war and acquitted of both of these charges after a submission of no case by the defence. The third charge against the accused was that he did " wilfully, deliberately and wrongfully encourage, aid, abet and participate in the maltreatment of a dead unknown member of the United States Army."

2. THE EVIDENCE

The accused was the medical officer in charge of a German dispensary at Marquise in France. The evidence showed that shortly before the time of the allied invasion of France the body of a dead U.S. airman was brought to his dispensary by a detail whose duty it was to collect dead bodies, and to remove them from the battlefield. The accused severed the head from the body, boiled it and removed the skin and flesh and bleached the skull which he kept on his desk for several months. The prosecution alleged that he eventually sent it to his wife in Germany as a souvenir. The accused pleaded that he used the skull for instructional purposes and when it had served these purposes, sent it home with the intention of burying it in a cemetery. He maintained that he was not guided by hatred or any intention to mutilate the dead body.

3. FINDINGS AND SENTENCE

The accused was found guilty of the 3rd charge and sentenced to 10 years' imprisonment. The sentence was confirmed by higher military authority.

B. NOTES ON THE CASE: MUTILATION OF DEAD BODIES AND REFUSAL OF HONOURABLE BURIAL

The usage relating to the protection of the dead left on the battlefield goes back to ancient days. It was first described as a usage by Grotius[1]. This usage is embodied in the Geneva Convention (1929) " for the Amelioration of the Conditions of the Wounded and Sick of Armies in the Field." This Convention imposes upon belligerents the obligation to search for the wounded and the dead after a battle, to protect both from robbery and ill-treatment and to bury the dead. Article 3, first paragraph, says : " After each engagement the occupant of the field of battle shall take measures to search for the wounded and dead and to protect them against pillage and

(1) *De Jure Belli ac Pacis*, II, Chapter 19.

mal-treatment." Article 4, fourth paragraph, says: "They" (the belligerents) " shall ensure that the burial or cremation of the dead is preceded by a careful and if possible medical examination of the bodies with a view to confirming death, establishing the identity and enabling a report to be made."

Article 4, fifth paragraph, says : " They shall further ensure that the dead are honourably interred that their graves are respected and marked so that they shall always be found." The Field Manual of the United States and the British Armed Forces contain similar provisions.(1)

Professor Lauterpacht says(2) : " According to a customary rule of the law of nations belligerents have the right to demand from one another that dead soldiers shall not be disgracefully treated and in particular that they shall not be mutilated but shall be, as far as possible, collected and buried or cremated on the battlefield by the victor." . . . " The belligerents are bound to make provisions for honourable interment and for respectful treatment and proper marking of graves so that they can always be found."

The court in this case held that a violation of these regulations constituted a war crime. Military courts of various nations have found prisoners guilty of offences against the dead and sentenced them. The following are examples of such charges :

(1) The United States Military Commission at Yokohama, Japan (20th April, 1946), sentenced Jutaro Kikuchi, a Second Lieutenant in the Japanese Army to 25 years' imprisonment, and Masaak Mahuchi to death, for " bayoneting and mutilating the dead body of a United States prisoner of war." The sentences were approved.

(2) Another United States Military Commission at the Mariana Islands (2nd-15th August, 1946) tried and convicted Tachibana Yochio, a Lieutenant-General in the Japanese Army and 13 others, of murdering 8 prisoners of war. Some of the accused were also charged with " preventing an honourable burial due to the consumption of parts of the bodies of prisoners of war by the accused during a special meal in the officers' mess." They were found guilty of these charges ; sentences ranging from death to imprisonment for 5 years were imposed.

(3) An Australian Military Court at Wewak (30th November, 1945) sentenced Tazaki Takehiko, a First Lieutenant in the Japanese Army to death for " mutilating the dead body of a prisoner of war " and for " cannibalism." The sentence was commuted to 5 years' imprisonment by the confirming officer.

(4) Another Australian Military Court at Rabaul (2nd April, 1946) sentenced Tomiyasu Tisato, a First Lieutenant in the Japanese Army, to death after finding him guilty of the " murder of an unknown Indian prisoner of war " and on the charge of " cannibalism." The prosecution in this case alleged that several prisoners had been killed and that their flesh had been eaten. The sentence was commuted to 15 years' imprisonment by the confirming officer.

(1) War Department Basic Field Manual 27/10, *Rules of Land Warfare*, 1940, para. 176, and British *Manual of Military Law*, Chapter 14, paras. 217-220.

(2) *International Law*, Vol. II, para. 124.

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